

BURGER LAW FIRM

# CLIENT SUCCESS STORIES



# Client Success Stories

Two Years of Victories at Burger Law

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Burger Law

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# Introduction

When I began Burger Law a little over two years ago, it was quite a challenge. I had a prior law firm for 15 years and had to rapidly start a new firm and market it and me anew. This was stressful; but many other business owners and lawyers have experienced this as well, so it is certainly not unique to me.

One of the things I committed to do was doing a newsletter by email to lawyers, clients and friends. My friend (and amazing immigration lawyer) Jim Hacking inspired me. I decided to do this every two weeks rather than intermittently as I had in the past. Since then, every two weeks I sent an email newsletter out. I try to mix legal issues, my clients' successes, my life, and unique views I sometimes have about law intersecting society.

The response to these emails has been fantastic. I have developed new friends and new relationships, interact better with my clients, lawyers, family and friends, maintain those relationships, and share. I have reestablished old relationships and forged new friendships in the last two years. The adage, "the more you give the more you get" is true.

Doing the emails has given me a forced discipline to do them every two weeks. I get to organize my thoughts and present interesting and unique stories to the readers. People ask me how I do it (I just make myself) and how I keep up putting out the content (I have gotten used to it). My efforts in doing so is greatly eclipsed by the friendships and connections that I have gotten because of it. I also keep me and my law firm in front of them in case my legal services can assist them.

As I did an email every two weeks for two years, I decided to collect them in this book. So here they are without a table of contents or any added commentary. They reflect the rise of my law firm and my family over the last two years sent to thousands of family, friends, clients and lawyers.

Special thanks to four women who help me with these: my amazing paralegal Casey Fluegel; Taylor Morthland, the best law clerk ever; Jessie Massey who helped put this book together and who has been a friend of my family for around a third of her life; and my beautiful, kind, loving and great editor wife Kristen Burger. I am grateful to have such amazing, smart and strong women around me.

# Announcing Burger Law

December 18, 2015

## Announcing Burger Law

Gary Burger is proud and excited to announce his new firm Burger Law. Gary has a 24 year track record of helping personal injury victims and their families and headed the Civil Litigation Group at his prior firm for 16 years. This tradition continues at Burger Law. Our focus is auto crashes, truck wrecks, medical malpractice, slip and falls, and workers' compensation. But we also pursue claims in general civil litigation. We are AV Rated, Board Certified, Superlawyer rated by peers, Multi-Million Dollar Advocates Forum, Top 100 Trial Lawyers, and AVVO Client's Choice Award.

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### Slip and Fall Claims and Law

Mary and Dora don't know each other but have the same story. Both were going shopping at a grocery store, walked through the parking lot and slipped and fell on 'black ice' they did not see. We have navigated their claims well through the labyrinth of Missouri slip and fall law.

The both were significantly injured – Mary had knee surgery and Dora will likely need surgery too. The manager at Mary's store had arrived that morning and almost sipped on a different ice patch behind the store. He salted that patch but then did not salt anywhere else, did not inspect the lot or ask anyone else to (and no one did). After Mary fell, her son and a store manager helped her up and both of them slipped on the ice patch too.

Dora similarly was with her son when she fell, and he slipped helping her too. They contacted the store owner immediately and the store managers saw the ice. There was no general snow or ice around.

As is increasingly common, neither store owned or maintain the parking lots exclusively reserved for their use. And the company that owned the lot hired someone else to plow and salt.

We learned there was a complete dearth of programs or practices to walk or inspect the property for ice or other conditions unsafe for guests. These stores were national chains that had published "trip slip and fall" prevention programs for in the stores but nothing for outside.

Of course these settled easy, right? No – Mary's case went to the eve of trial, after all experts were deposed, and we just defeated summary judgment in Doras case and that should go to trial soon. Defenses raised – the injured person should have seen it or watched more carefully, store did not own the property and lot owner only had to plow, and it was a general accumulation of ice/snow and thus no liability under Missouri law. Let's look at the law:

A landowner has to keep its property free from dangerous conditions. MAI 22.03 (7th Ed.). MAI 22.03 states the owner only could have known of that condition, so the lot owner is on the hook. Further, Missouri courts have long held that, in parking lot cases, the store using the lot owes a non-delegable duty to its invitees to provide a reasonably safe parking lot. *Cannon v. S. Kresge*, 233 Mo.App. 173, 116 S.W.2d 559 (1938); *Demko v. H & H Inv. Co.*, 527 S.W.2d 382 (Mo. App., 1975); *Groce v. Kansas City Spirit, Inc.*, 925 S.W.2d 880, 885 (Mo. App. W.D., 1996); *Turcol v. Shoney's Enterprises, Inc.*, 640 S.W.2d 503 (Mo. App. E.D. 1982); *O'Connell v. Roper Elec. Co., Inc.* 498 S.W.2d 847 (Mo. App. 1973).

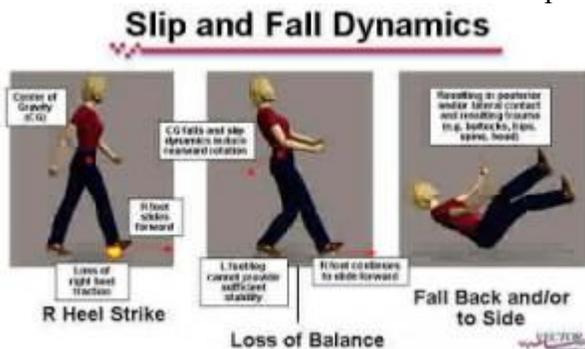
This duty is based on the “merchant’s duty to invitees to provide a reasonably safe means of ingress and egress.” *Demko*, 527 S.W.2d at 384. This duty extends beyond the boundaries of the premises under the invitor’s control or occupancy to include the approaches which are expressly or impliedly invited for use. *See Cannon*, 116 S.W.2d at 569. Mary and Dora were customers of the stores that lease space around the lot and were invitees of both the store and lot owner defendants.

In *Demko*, the Court said an operator who controlled a parking lot had superior knowledge about ice formation and therefore has a duty to keep a parking lot adjacent to their premises safe because of that superior knowledge. *Demko*, 527 S.W.2d at 384-385. “The basis for

liability in this type of case is knowledge of the storekeeper of an unsafe condition or of a danger to a shopper, superior to that of an invitee.” *Demko*, 527 S.W.2d at 384, quoting *Gilpin v. Gerbes Supermarket, Inc.*, 446 S.W.2d 615, 618 (Mo. 1969). Although a landowner is not required to remedy a dangerous condition that generally affects all property in an area, they are required to address a property hazard that was known or reasonably discoverable. *Harris v. Neihous*, 857 S.W. 2d 222 (Mo. App. 1993); *see also Gorman v. Wal-Mart Stores, Inc.*, 19 S.W.3d 725, 732 (Mo. App. 2000)(A defendant may voluntarily assume a duty to protect the safety of an invitee by plowing ice, and once such a duty is assumed, the defendant must exercise reasonable care).

Whether a weather condition of ice or snow was a general condition in the community or was an isolated condition in a particular area and whether a duty exists are questions of fact for a jury. *Otterman v. Harold's Supermks., Inc.*, 65 S.W. 3d at 555-56 (Mo. App. W.D.2001); *Willis*, 804 S.W.2d at 421; *Turcol*, 640 S.W.2d at 508.

Open and obvious can be a problem. Here Dora and Mary did not see it and neither did their sons. They did not know what they slipped on until lying on the ground and ‘black’ ice is so named because the ice blends in with asphalt and is difficult to see.



## Auto Crash Settlement

We recently settled Brian's auto crash case for \$59,000. He was rear ended in St. Louis County during driving home from work. The other driver was distracted from another wreck. His injuries were typical for this type of impact. The forces of a rear end crash go straight to the spine and the discs between our neck vertebrae are not designed to handle that type of acute force.

Brian sustained a soft tissue injury to his neck and received medical treatment right after the crash. He continued to have pain and went to a good area chiropractor. He consulted with an orthopedic surgeon and received a few injections to help him with his case. We became involved, collected Brian's medical records, and made a demand on the insurance company to settle.

They offered \$24,000 to settle the case, which we rejected. We then filed suit and aggressively pursued the claim. We did depositions, set the case for trial and were ready to try the case. We also reiterated our demand numerous times because most clients, do not want to add to the stress of an injury with a trial. Shortly before trial defense lawyers offered enough money to fairly compensate Brian for his injury, so we settled the case.

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## Rarely Buy an Extended Warranty

It's the end of the holiday shopping season and hopefully so too is over-consumerism. When we do purchase expensive things, the cashier often asks us to buy an extended warranty. If a company makes and sells something, shouldn't it last longer than a year? Does this really decrease and limit the warranty you already have? YES to both.

Missouri (and Illinois and most states) law already provides a 4 year warranty for goods sold in stores. All goods have to be merchantable, which is implied in any contract for their sale (R.S.Mo. §400-002.314). This means that products must be of fair, average or better quality, must be fit for how they are typically used, and must conform to the promises made on their container or label. If the seller violates this you can have up to four years to sue the seller for breaching this implied warranty of merchantability.

So, if someone tries to sell you an extended warranty of less than 4 years, don't buy it cause it doesn't extend anything. Your rights are already be protected under your state's laws and the Uniform Commercial Code for up to four years. If you are considering it to make things easier, make sure you read what the warranty covers. Here are some dos and don'ts:

Do:

- Buy a 5 year or more warranty.
- Return something when it breaks. Especially quickly.
- Keep receipts.

- Stand up for your consumer rights. Send emails and complain. File a small claims court case if you
- get ripped off. Complain on social media or BBB.
- Call the attorney general or other consumer fraud places to complain.
- Be nice but firm.

Don't:

- Buy a 1 or 2 year warranty- Missouri law already protects you.
- Let stores or manufactures influence you or not stand up for their product.
- Let stores tell you they don't take stuff back unless they told you at the beginning.
- Buy any warranty if you won't keep the paperwork.
- Take no for an answer – these days everyone has to protect themselves if companies don't care.
- Be mean or snotty – kill them with kindness

Responses:

“Best wishes to you in your new firm.”

-Kristin

## **Repeat Auto Crashes and an Underinsured Claim**

February 9, 2016

Dear Alif,

I thought I would share a story about my client Audra. Last week I settled her car crash cases. Two aspects of her claims were unusual. First, she had one rear end collision, went to the ER, and went to a chiropractor. On her way to her fourth (and last) visit she was rear ended again. She was injured more in the second crash. She had physical therapy, orthopedic consultation, back injections, and is permanently injured. What do you do when the defendants in each accident will blame each other for damages? File one lawsuit against both defendants for both accidents. We litigated the case, took depositions, and settled both claims – one the Friday before the Monday trial.

Second, there still was not enough money to fully compensate her for her damages – so we are now filing her underinsured lawsuit against her insurance company. She had worked the same medium labor job for 15 years at a local grocery store. After the car crashes, she couldn't work at all. Her pain was truly excruciating and her doctors restricted her activity. She worked hard to improve herself and eventually was able to return to work. Her employer was great and put her in a less strenuous job – but she makes less.

Underinsured coverage applies when a negligent driver does not have enough insurance to cover all your damages. If your damages are \$100,000 and the driver who crashed into you only had \$25,000 in insurance coverage, you are underinsured for \$75,000. Insurance companies sell coverage to fill in this gap. We always make underinsured claims where damages exceed coverage.

To make an underinsured claim, we first have to settle the claim with the main tortfeasor and exhaust their coverage (including excess or umbrella and we get an affidavit of no more insurance). If a negligent driver has \$25,000 in insurance and settles for \$20,000, there is no underinsured claim. Insurance companies erect roadblocks against their own insureds in underinsured claims. They do not tell claimants they have underinsured coverage or how to make a claim. Often they will have separate claims adjustors and separate departments for underinsured coverage. After I made Audra's underinsured claim, the adjustors were calling me to ask if I was really trying to settle a property damage claim, get medical payment coverage or what mistake had I made. Obstacles decrease payouts and improve profits.

After an underinsured claim is made clearly and in writing, the insurance company assigns a separate underinsured claims adjustor. We communicate with that adjustor about the status of the claim and advise when we are about to settle the claim against the negligent driver (they want to make sure there is no more insurance). We get a full recovery from the underinsured carrier for all damages, make time limited, policy limit demands and file suit quickly. In Illinois, we make an arbitration claim as all policies mandate arbitration (which is enforced by statute).

Underinsured policies usually provide a "set off" or credit for the amount recovered from the negligent driver. Lack of disclosure of this is, frankly, a misrepresentation by the insurance company. When you buy \$100,000 in underinsured coverage it is promised as such, and you pay the premium on that amount. What you do not realize is only \$75,000 in coverage is provided because the negligent driver would have at least \$25,000 in coverage.

Please call or email if I can ever help like we helped Audra. We generously share fees with referring lawyers under Rule 4-1.5(e). I hope this note was informative and thanks for reading.

Gary Burger

## Responses

"Thanks for sharing this with me, it was very informative."

-Christopher

"Gary, Thank you for your informative e-mail case histories. I have heard reports of your excellent work over the years...."

-Alif A. Williams, Esq.

# Brain Injuries and \$1 Million Medical Malpractice Settlement

February 26, 2016

Dear Dawn,

I was able to secure a little over \$1 million settlement for a well deserving client with serious damages and permanent brain damage. Our client Kelly was diagnosed with, but not properly treated for, a brain aneurysm. Kelly went to a Southern Illinois emergency room and was treated by a physician there who diagnosed a recent brain aneurysm but did not monitor her or refer her to neurosurgeon for immediate “coil” surgery. Kelly had a “thunderclap” headache (or the worst headache of your life) and had problems for a few days before she was brought into the emergency room. The doctor there did a CT scan of her brain and found an aneurysm, but did not do a spinal tap to assess whether it was still bleeding or keep her for observation or refer her immediately to a neurosurgeon.

Instead he advised her to call a neurologist the following week for follow-up visit and did not imply any urgency in that. Two days later the aneurysm ruptured again causing brain damage. This is completely contrary to the standard of care. When an aneurysm happens, immediate treatment is needed to prevent further bleeding and brain damage. Fortunately, Kelly has made a good recovery and lives at home with her father. We were able to file suit and aggressively pursue this case and obtain the full insurance policy limits for Kelly. In addition, we worked with the family to put the money in a trust so that Kelly can continue to get benefits to help her for medical care for the rest of her life. This is called a Supplemental Needs Trust and puts the money in a trust for needs that are supplemental, or in addition to, the needs provided by Medicaid.

I am so proud and have a lot of gratitude for being able to help Kelly and her family – they are the kindest family and deserved good, aggressive and honest representation. If you or a family member have this type of head pain – insist on prompt and thorough evaluation and testing, and be seen by a neurologist or specialist.

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## Facts about Brain Injuries

We have represented others with brain injuries as well. Each year, an estimated 1.7 million people sustain a traumatic brain injury (or TBI). While around 75% of TBIs are concussions or other forms of mild traumatic brain injury, the other 25% are moderate to severe injuries and can have lasting consequences on a person’s quality of life. In some cases, these injuries can even cost a person his or her life: TBIs make up almost one-third (30.5%) of injury-related deaths in the United States.

## **How Prevalent are Traumatic Brain Injuries in the United States?**

Around 5.3 million Americans, or about 2% of the total population, currently live with disabilities that resulted from a TBI. Of the 1.7 million people who experience these injuries each year, 80% (1.365 million) are treated and released from an emergency room in a hospital, but that leaves the other one-fifth in critical condition. The number of hospital visits that are the result of a TBI increased from 2002 to 2006 from 14.4% to 19.5%. Fortunately, it is believed that 75 percent of traumatic brain injuries treated in emergency rooms are reported as mild in severity.

## **What are the Causes of Traumatic Brain Injuries?**

The most frequent cause of TBIs are slip and fall accidents, which result in the greatest number of TBI-related emergency department visits in the United States -- at least 523,000 of them, in fact. They also cause the greatest number of hospitalizations at 62,334 annually on average. Essentially, falls are to blame for more than one-third (35%) of all TBIs. Between 2002 and 2006, there was a 62% increase in fall-related TBIs seen in ERs involving children age 14 and younger. Also between those years, adults age 65 and older experienced a 46% increase in ER visits, a 345 increase in hospitalizations, and a 27% increase in TBI-related deaths.

## **What are the Types of Brain Injuries?**

Diffuse axonal injuries occur when the brain moves back and forth in the skull as a result of acceleration or deceleration. Many concussions are considered to be mild to moderate diffuse axonal injuries. The axons in the brain, responsible for sending messages between neurons, are severed when brain tissue slides over brain tissue. Unlike a blunt force injury, this injury is considered diffuse because it affects the entire brain. Many people who experience a diffuse axonal injury experience swelling in their brain. Most people survive a mild to moderate form of this injury, but very few people survive severe diffuse axonal injuries without permanent impairment. This type of injury is best diagnosed with an MRI.

Focal brain injuries occur when someone experiences a severe blow to the head. Focal brain injuries can be open or closed and can involve something, a piece of the skull or penetrating object, piercing the brain. These injuries are referred to as focal because they only affect a specific area of brain tissue. Focal brain injuries often result in contusions and hematomas. A contusion occurs when brain tissue is damaged. A hematoma occurs when there is bleeding present in the skull. The symptoms of a focal brain injury vary depending on the location of the damage to the brain. This type of injury can be easily diagnosed with a CT scan.

## **How can a TBI affect someone?**

While mild TBIs, like concussions, tend to heal after a short period, mild to severe TBIs can present a lifetime of consequences for an individual. Anything from hampered motor skills or mobility issues to a persistent vegetative state can occur after a traumatic brain injury. Even if a person survives a TBI, that injury can present complications further down the road. A moderate head injury, for instance, can increase the risk of developing Alzheimer's disease by 2.3 times; for severe head injuries, the likelihood of a person developing Alzheimer's increases to 4.5 times.

## **What Should Someone do if a Loved One Has Suffered a Traumatic Brain Injury?**

The costs of medical care for a person with a TBI can be astronomical, and it's not uncommon for people in the United States to have to file for bankruptcy just to pay off medical bills. Long-term and permanent injuries can have devastating consequences for patients and their family members, and insurance companies sometimes don't make this process any easier.

Brain injuries are always a concern when you are involved in a fall, collision or if an unstable piece of equipment strikes you in the head. You should always be examined for a brain injury if you are involved in a serious accident.

Many people don't know that the symptoms of a brain injury may take time to develop. You may be involved in a car accident in which you sustain a whiplash injury and only start to notice the resulting cognitive impairment once you return to normal activities. It is important for your long term health and recovery to be examined by a medical professional as soon as your symptoms begin to surface. Quick action is also an important factor for a personal injury claim. Thanks.

### **Responses:**

Great article...very informative...thanks for sharing!!!

-Dawn R. Berry, CIC

"Interesting read and great settlement! I remember her case."

-Zsantee

## **My Mom**

March 14, 2016

Dear Jim,

My mom, Joan Burger, has joined Burger Law to help in our more complex litigation and mediation practice. I have always looked up to her as a lawyer and remember watching her try a case when I was 13 years old - the age of my son now. She practiced law for 19 years prior to becoming Circuit Court Judge in the City of St. Louis. She then worked as mediator, but recently ended that phase of her career. (She is also Chairperson of the St. Louis Election Board and an awesome Grandma).

She is working with me on cases and proving invaluable. It is really fun to be able to practice with her - it only took me 24 years to get up to her speed (I have to up my game). If you have any questions for Judge Burger, please call us and she will answer them. Or, as always, call anyone else at Burger law with a legal question.

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My mom and I are presenting Burger Law's first **CLE on April 28, 2016**, from 10 am - 1:15 pm. A total of 3 MCLE credit hours will be available with **1 hour ethics credit**. The presentations are as follows:

- How to handle and settle small personal injury cases
- 20 Advanced trial tips
- Top 10 Ethics issues for litigation and malpractice prevention

We both have done great CLEs in the past to educate lawyers on practical legal issues and improve our profession. We are pumped to present together. There is only one rule for our CLEs: No war stories. Please come to get educated and to advance your practice. This CLE is kind of **FREE** - we ask attendees to make a generous donation to Legal Services of Eastern Missouri. [Click here to register for the FREE CLE.](#)

Here's a pic of me and my mom, and a trial update below.



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## **TRIAL UPDATE**

What do you do when a defendant in an auto crash and their insurance company refuse to settle a case or even communicate with you? File, litigate and try the case. This is what I did for the Smith- Washington family a few weeks ago. On February 18, 2016, I tried their auto accident case in St. Clair County, Illinois and obtained a **\$234,317 judgment**. This is an excellent victory as our medical specials were about \$24,000, with about \$9,000 in property damage and rental car costs. The court gave \$200,000 for pain and suffering for our two clients. They had low back injuries with chiropractic care and some epidural steroid injections.

Most people assume that if they are in a car accident and it is someone else's fault, the case should settle quickly for all their damages. Nope. Ultimately the only power a car crash victim has is to file a lawsuit and go to trial. Suing the at-fault driver is necessary to combat cheap insurance companies. Those companies have contracts with the insureds to indemnify, or pay, for personal injury damages that the negligent party causes. That's what we did for the Smith-Washington family. We filed suit and litigated the case. Our clients' depositions were taken and we took depositions as well. We presented our medical evidence through evidence depositions of physicians. You think that a crash that is so violent that it takes the back bumper off a car would settle easy. Not!!

But no, there were a number of lawsuits related to this case. The lawsuit we tried and won, a separate declaratory judgment action against the defendants regarding insurance coverage, which we appeared in and litigated, and an arbitration case against our own clients' insurance company recovered damages under their policy. For previous article on that case, [click here](#). We continue to fight for the Smith-Washington family and continue to fight for all of our clients, despite the position taken by our opponents. Thanks for reading.

**Gary Burger**

*Board Certified/AV Rated/Superlawyer*

### Responses:

“That’s a good one I bet people are responding to this one...I’m forwarding to my marketing person as an idea we can maybe use down road nice work man.”

-James

# Sustained

March 28, 2016

Dear John,

Well, practicing with my mom is off to a great start. We have done three depositions together, producing clients in two serious injury cases (injured lawyer and a child with brain damage) and deposing the defendant truck driver in a tractor – trailer crash. In that depo, my mom ruled against me and for Matt Noce. LOL.

So, what do you do when your mom rules against you? Didn't think I would be in a depo saying "Aw, come on mom, please..." I think she can do it next time.

Our CLE on April 28, 2016, quickly sold out. So we are doing it again the same day in the afternoon from 2 to 5 pm. A total of 3 MCLE credit hours will be available with 1 hour ethics credit. The presentations are as follows:

- How to handle and settle small personal injury cases
- 20 Advanced trial tips
- Top 10 Ethics issues for litigation and malpractice prevention

We both have done great CLEs in the past to educate lawyers on practical legal issues and improve our profession. Register quick to get educated and to advance your practice. Limited space and FREE - we ask attendees to make a generous donation to Legal Services of Eastern Missouri.

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## Hung Jury = Mistrial

I tried my second case of the year last week before Judge Cohen in St. Louis County. It was a hard fought battle against Rufus Tate. The Judge was kind enough to complement our lawyering and professionalism at the end of the case to the jury (Rufus is a good trial lawyer). I represent a young woman who alleged she was fired from her job because she was pregnant. There was no resolution – we will have to try it again. The judge determined that he jury could not reach a decision and declared a mistrial.

After the jury was out for about 4 hours they sent a note to the judge saying they were Deadlocked, 8 to 4 for the plaintiff (my client). In Missouri state court a plaintiff needs 9 of 12 of the jurors to agree on a verdict. There is an instruction sometimes called the 'hammer' instruction that a judge can read to a jury when they are deadlocked encouraging them to come to a resolution and that the law favors final decisions in disputes. This instruction is sometimes read to encourage a jury to continue deliberating so that they can compromise and come to a final decision.

However, there is case law discouraging the use of a hammer instruction if the court knows how the jury is voting. This occurs more often in criminal cases – if the jury is 11 to 1 for guilty and the judge says go deliberate more, the court is kind of asking for a 12-0 guilty verdict. In our case, although court did not ask, the jury’s note said they were 8 to 4, and a hammer instruction might encourage a plaintiff verdict. The judge brought the jury out and asked each if they thought further deliberations would help, and all 12 said no. So, the judge declared a mistrial. The jury really worked hard and had a genuine impasse they could not resolve. We hope to try the case again and get a win. To be continued .....

## Responses:

“Always listen to mama!”

-John

# Married

April 11, 2016

Dear John,

I’d like to share my good fortune – I got married on Saturday!!!! I am so lucky to have met and fallen in love with an amazing woman. We had a bunch of friends and family join us over the weekend at the 9<sup>th</sup> Street Abby in Soulard. The food was great and our friends Joe and Shawn, of Falling Fences, played great tunes (they play Sunday nights at McGurks). Kristen and I met about 2 years ago and we have had a great time together ever since. We have full, busy lives and parent our three kids, Jordan, Lucy and Audrey. I am still a little numb, but am so happy to call Kristen my wife. I didn’t think I would find this at this stage of my life. I work on my gratitude to appreciate how good I have it – but having gratitude for my family comes easy. Remember and treat your spouse or partner like a newlywed every day. Here’s a picture of us at the Justice for All Ball:



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## LAST CHANCE TO REGISTER FOR OUR CLE

Burger Law's April 28, 2016 afternoon CLE will include 1 hour of ethics instructions and is almost full. Attendees to may past CLEs have appreciated the nuts and bolts information we try hard to convey. The ethics instructions will include Rule 1.15(e) which governs co-counseling and referral fees. I am asked more and more often to work with other lawyers on their cases to achieve great results. We co-counsel on Auto, Truck, Motorcycle crashes, medical malpractice claims, slip and falls, workers' compensation and class action suits. The presentations are as follows:

- How to handle and settle small personal injury cases
  - 20 Advanced trial tips
  - Top 10 Ethics issues for litigation and malpractice prevention
- 

## Third Trial This Year

But what a crazy few weeks leading up to the wedding - I had back to back trials right up to the wedding. The second was a two week trial in Federal Court against General Motors on behalf of my client. We sued GM alleging their roof on GMC Savannah was too weak to protect occupants in a rollover crash. We worked on the case for over 2 years prior to trial.

Thousands of documents were produced, many depositions taken and we fought really hard for an amazing and deserving client. Rollover cases can be tough and their success depends on the vehicle, the strength of its roof, the snugness of the seatbelt and the facts of the incident. Forces in a rollover can be serious, juries can be reluctant to blame a manufacturer, and they are hard fought by the defendants.

I partnered with a large law firm and tried a rollover case against Chrysler back in 2006. We put a lot of work in that case and tried it for 6 weeks in the City of St. Louis. At the end of the case we asked for a large recover for our clients (2 deaths, one severe injured client and other minor injured) We lost-the jury returned a defense verdict. But that crash was at 70 mph and involved many rollovers.

The case last week was deferent: 30mph roll on exit ramp to rest stop; 2 rolls; 2 woman occupants and 4 dogs. But the injuries were catastrophic- my client was paralyzed from her 6<sup>th</sup> cervical vertebra down. She handled her injury with poise, courage, and temerity. Her testimony was moving and her efforts to recover and live with her injury have been heroic. We had top notch experts and presented our case well. We really burned the midnight oil and gave it our all. Unfortunately the jury returned a defense verdict and no recovery was obtained.

Why write about it? Good trial lawyers don't win every case. I am as proud of my work in this case, or more so, as I am for other successes for clients I write about. It's important to fight the

good fight and stand up for what is right. And we hone our craft through trials and zealously representing our clients; we can learn as much in defeat as in victory.

As we progress in life we relearn the wisdom of the serenity prayer – We can only control our actions and not the outcome of many things in life. It's hard to truly accept the things we cannot change – or as my client said on the stand. "I prayed for God to heal me, but whether He would was up to Him." As heartbreaking as the loss was, I redouble my efforts in my other cases to do as well as I can.

Some lessons: When defendant's experts have testified a lot you don't need OSI's (other similar incidents) in a products liability case – use their other cases; remember we are trying cases in 2016 and jurors often are numb to our client's plight and don't look on lawsuits well. The public is also numb to corporate bad behavior – what was outrageous 20 years ago is ho hum now.

In a products liability case Plaintiff must show a defect was unreasonably dangerous when put to anticipated use. It seems like you have to show really bad stuff to win these days - unless you have the killer smoking gun document or depo, you will have a tough time. We have really good ways to do this, and I am psyched for the next one.

Our next CLE will include products liability claims and lessons learned from this and other cases. If you have any questions about this case, or any other, email or call me. Thanks.

Gary Burger

## Responses

"Gary, I am very happy of you. That is terrific news."

-John

# Diving

May 9, 2016

Dear Robert,

I thought I'd share one of my major non law activities. My second job is as a scuba dive master and trail leader at Bonne Terre Mine. This abandoned lead mine is a truly unique dive experience in an amazingly vast underground space. We were just voted top dive spot in America.



The mine's great staff of professional divers guide hundreds of divers there each year. Email me if you'd like to dive with me and check out the mine, or [click here](#) to visit the website to get more information (The mine has been reported on and highlighted in the press many times).

Our dives range from beginner to really advanced tech diving. The mine is a labyrinth of narrow tunnels, huge rooms and deep holes - with depths too deep to really dive. Tons of fun for us!!! It's taken me years to learn the mine, hone my skills and be able to take divers.

Diving has many analogies to being a lawyer and life. We practice our skills, prepare for emergencies beforehand, task load ourselves so we can more easily multi task, and are responsible for ourselves and our dive buddies. I could go on and on.....

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Our first CLE was a **HUGE SUCCESS**. Almost 100 people attended to learn the law (as I see it.) We had tremendous reviews. Here's one from a great lawyer, Alif Williams:

Thanks so much to you and your mom for the *very best CLE I have attended in my 37 years of practice*. I mean it. Everything discussed was directly relevant to important and sticky issues that come up in a PI practice. The ethics discussion was also very good. I never knew MoLAP existed until today. I will not hesitate to encourage dependent colleagues to use it, especially given the confidential and remedial aspects of the program. You are obviously a brilliant attorney. Your superior knowledge,

professional commitment and charisma are readily obvious.

I swear I did not write this (but Alif gets into the **next CLE in June** for free). **If you would like the great materials** my mom and I prepared, **please email me** and I can mail you the booklet. We will be publishing it on Burgerlaw.com.

We had some questions about resolving liens and the **Missouri Lien Reduction Statute**. That law is [R.S.Mo](#), section **430.225** - which provides your client gets half the settlement proceeds after your fee and expenses and the lienholders split the other half pro rata. I attach below a excel spreadsheet we use to calculate this.

[LIENCALCULATIONS.xlsx](#)

One of my favorite parts of the CLE was when I told folks to **use R.S.M § 494.470.1 for Voir Dire strikes for cause**, because my Judge Burger had not seen it before. I take it up to the judge when trying to strike jurors for cause. Many are not familiar with it.

This provides in part: "**no person who has formed or expressed an opinion** concerning the matter or any material fact in the controversy in any case that **may** influence the judgment of such person... shall be sworn as a juror in the same cause.... "

Take care.

**Gary Burger**

# Remember the Alamo

May 23, 2016

Hey Jim,

So we went to the Alamo on Friday:



## Interesting Alamo Facts:

1. The Alamo was originally built as a church in 1718 to convert Indians to Christianity.
2. The battle of the Alamo occurred when 186 Texans, led by David Crockett, James Bowie, and William Travis, held out against General Santa Anna's large army for thirteen days before finally being defeated and killed.
3. Sam Houston defeated General Santa Anna at San Jacinto a month later, uttering the famous battle cry: "Remember the Alamo!" They diverted Santa Anna's attention with the beautiful "Yellow Rose of Texas," before attacking.
4. Later after he was kicked out of Mexico, Santa Anna retired to New York. He would chew parts of the Chicle tree and talk with his neighbor Wrigley. Guess what Wrigley invented?
5. Former District Attorney Susan Reed once issued a press release titled "Don't Whizz on the Alamo." It's made from limestone and urine is highly corrosive.
6. In 1982, city council banned Ozzy Osbourne from San Antonio for peeing on the Alamo statue.

## ANOTHER CLE - DEPOSITION AND MEDIATION\_PRACTICE

Judge Tom Prebil and I are presenting a two hour CLE. We are doing two sessions - morning and afternoon.

### The presentations are as follows:

**Advanced Deposition Practice:** You're in litigation. How do you prepare your client to be an effective witness and advocate in their case? How do you depose the Defendant to establish liability and win your case? Doctor depositions for trial? I will tell you how.

**Winning Mediation Strategies:** Mediation techniques; negotiation tactics; how mediators work; what wins in mediation and how to get the best settlement possible. Judge Prebil will provide his views of mediation as a mediator, former Judge, and long practicing trial attorney. This is a real opportunity and I am thankful Judge Prebil is joining me. (I will present strategies and specific presentations used in successful mediations.)

Location - 500 North Broadway - First Floor

**June 27, 2016**

Morning session: 10 am to noon

Afternoon session: 2 pm to 4 pm

We both have done great CLEs in the past to educate lawyers on practical legal issues and improve our profession. Here are some comments from the last one:

*"Exceptional. Great presentation. Wow."*

*"Thanks for the **very best CLE I have attended in my 37 years of practice.** I mean it. Everything discussed was directly relevant to important and sticky issues that come up in a PI practice."*

*"Your superior knowledge, professional commitment and charisma are readily obvious."*

And please [click here](#) to view our new **Lawyer to Lawyer page** on Burgerlaw.com for great free resources - forms, videos from CLEs etc. Or email or call me with questions.

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### Another Trial - And we even won this time!!

Last week I tried another case in St. Louis County and obtained an actual and punitive damages verdict for our client Loryn Coffey. Very proud to represent Loryn and help her and her kids. I actually tried this case twice – the first trial resulted in a mistrial.

This was a pregnancy discrimination claim against a small business. Loryn was terminated from her position because she was pregnant in 2013. The Defendant put up a lot of stories and made a lot of arguments of why her termination wasn't pregnancy related.

This time the Jury was convinced the defendant discriminated against Loryn and rendered a punitive damage verdict for almost as much as the actual damages. We are so grateful to the jurors who did their public duty and gave their time and attention to this important case. Jurors called me the next day. The defendant lost credibility after cross examination.

In this trial we obtained punitive damages for our client. Punitive damages are recoverable in Missouri if the defendant's conduct:

“was outrageous because of defendant's evil motive or reckless indifference to the rights of others, then in addition to any damages to which you find plaintiff entitled [for actual damages, the jury] may award plaintiff an additional amount as punitive damages in such sum as [the jury] believe will serve to punish defendant and to deter defendant and others from like conduct.” MAI 10.01.

Note that the State of Missouri takes 50% of the net proceeds of any punitive damages verdict. See *Burnett v. Griffith*, 769 S.W.2d 780 (Mo. 1989). But we get our attorney fees and expenses under [R.S.Mo.](#) Section 213.111.

Fight to the end in all your cases. Never give up. We are blessed to be able to try cases for our clients - too many lawyers don't.

Did you know that four messengers rode from the Alamo to get help through 5,000 Mexican soldiers - but learned no help would be sent? So, **they rode back through those same troops and back into the Alamo to fight and die with their brothers?** Wow.

Thanks for reading.

**Gary Burger**

Responses

“Gary, this is your best one yet. A++++”

-Jim Hacking

# Summer

June 22, 2016

Hi Karen,

Happy summer!! Here's **some summer news**.

The Missouri Supreme Court has ruled that the **noneconomic damages cap** in Missouri statute section 538.210 **does not violate the Missouri Constitution**. So, noneconomic damage recovery for the families of Missourians who die as a result of medical malpractice is capped under the statute. In *Dodson, et al. v. Ferrara, et al.*, -- S.W.3d --, No. SC95151 (Mo. 2016), the plaintiffs obtained a \$9 Million noneconomic damages verdict for medical malpractice in the death of a 34 year old wife and mother. The trial court reduced that recovery to \$350,000 under 538.210.

The Missouri Supreme Court relied on *Sanders v. Ahmed*, 364 S.W.3d 195 (Mo. 2012), and affirmed the trial court's imposition of the damages cap. Please [click here](#) for the Dodson opinion, and [click here](#) for the current [R.S.Mo.](#) 538.210. The court rejected right to jury trial and equal protection challenges to the tort reform cap.

Just in case you thought there were too many laws constraining the second amendment, the **Missouri legislature has passed** and sent a bill to Governor Nixon called "**Stand your ground" or conceal and carry without a permit**. If signed, courts would have a lot of work clarifying what it means - [click here](#) for article about it. Terrible tragedy in Orlando - so sad. But we get these mass shootings weekly in America.

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## Can't Legislate Restrictions or Guidelines for Guns Because it's in the Bill of Rights?

What about the huge amount of tort reform and constraints on the rights of injured people and their families despite the Right to Trial by Jury (7th Amendment) (like *Dodson* decision)?

What about libel and slander laws and constraints on the First Amendment? Warrantless wiretaps and searches since 9/11 straining the language of the Fourth Amendment?

Right to Vote? It seems it's harder to vote in Missouri than buy a gun - you need more identification for sure. Alright, off my soapbox.

If you're a **music lover** like me, you may be entitled to **free tickets**. Ticketmaster just settled a \$400 million lawsuit. If you bought tickets through the service between Oct. 21, 1999, and Feb.

27, 2013, you might be to entitled ticket codes allowing you to claim two free general admission tickets - [click here](#) for an article or [click here](#) for rules on how to recover from Ticketmaster.

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**Summer vacation** is an American ritual that we grow up with and pass to our kids or family. It's also a well needed reprieve from the stressful world we all live in. Sometimes I don't even realize how stressed and consumed in my day to day life I am, until I get away and slow myself down. It's an important reminder for us to slow our lives down, relax and be conscious and present to the world around us.

Did you know **we are losing our coral reefs**? [Click here](#) for another article on bleaching of coral reefs. Kristen and I went to Roatan Honduras last week for vacation. Amazing time and had a blast on our honeymoon. The scuba diving was great. We had a glimpse into the underwater ecosystem that is constantly growing, interacting and evolving.



**Congratulations** to Thomas Prebil and Robert

Cohen on their retirement from the bench in St. Louis County. Judge Cohen has served for (I think) 42 years as a Judge - first being elected to the position before the Missouri Court Plan was passed. Judge Prebil tried cases as a defense lawyer, as a plaintiff's lawyer and then took the bench for many years as well.

Both are shining examples of what lawyers and judges should be: compassion for the citizens, companies, and other entities that come before them, hard work ethic and drive to mete out fair justice. Both worked from law school to retirement without missing a beat.

I had the good fortune of having Judge Prebil as a mentor in my first years of practice. He taught me how to zealously litigate and be a gentleman while doing so. Judge Prebil second chaired me in my first jury trial and major verdict. We obtained a strong compensatory and punitive damage verdict, and kept it on appeal (including to the Missouri Supreme Court). The insurance company denied the claim in bad faith and we collected over \$1 Million on a \$500,000 policy for our client Evelyn Goodlow. As serious as the practice of law can be, Tom always found the right time to chuckle.

I was lucky to try two cases before Judge Cohen in his last 6 months. Judge Cohen is working and trying cases to the very last day he is on the bench - no shirking. In my last trial in front of him four weeks ago, we were the only jury trial going that week in the St. Louis County courthouse.

My second favorite part about being in front of him is that he argues both sides of any issue. If you argue a matter before him, he will set forth the legal rational on both sides of the argument. Mr. Burger you would say this, this, and this in support of your argument and I suppose the defense would say this, this, and that, and then your response would be this. Is there anything to add? And then both lawyers would sit there and say “uh no you basically said it better we would have”, and then he rules.

It becomes obvious he has done this before. But, it is never condescending to you or dismissive in any way. He synthesizes your case better than you can – I asked him to close for me the last trial (but so did opposing counsel).

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## **SUMMER SAFETY: We deal with injuries from the following all the time, so please remember:**

### **BE PREPARED FOR HOT TEMPERATURES**

Heat stroke can strike anyone, but people who work outdoors and the elderly are particularly at risk. Wear loose fitting, lightly colored clothing and stay ultra-hydrated with sports drinks. An early warning sign of heat stroke is cramping in the legs. If you experience cramping, take a break from your activity and hydrate yourself until the cramping is gone.

### **BE CAREFUL SWIMMING AND BOATING**

Never leave a child unattended near a body of water. It doesn't take much water for a person to drown. Make sure that young children are equipped with proper flotation devices like water wings and life vests. Also beware of diving in water of unknown depths and never swim alone. When boating, never operate the vessel under the influence of drugs or alcohol and always steer clear of people floating and swimming in the water.

### **FIREWORK FUN**

Every year we see people with blast injuries, burns, scars and disfigurement from handling fireworks. It is best to let sober adults handle fireworks and to keep children a safe distance away.

### **RIDE YOUR BIKE**

It goes without saying that everyone, regardless of age, should wear a helmet when riding a bicycle, but I will include that reminder in here anyway. Cyclists should wear brightly colored clothing and make sure that their bikes have reflectors appropriate for nighttime driving.

## **ALL-TERRAIN VEHICLES, DIRT BIKES AND MOTORCYCLES**

Here is a sad statistic: Children account for 30 percent of all ATV related deaths and emergency room treated injuries. Do not allow children who are not old enough to drive to operate these recreational vehicles. Keep in mind that most ATVs are not designed to carry a passenger and you should always wear a helmet.

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## **MOWING THE LAWN**

We tend to see a lot of projectile object injuries that stem from accidents with lawnmowers. Be sure to remove sticks and stones from the lawn prior to mowing. Always wear hearing and eye protection and shoes that provide superior projection. That means no sandals when cutting the grass.

**HAPPY SUMMER!!!!**



# Independence Day Trial Lawyer

July 4, 2016

Janet,

President John Adams is one of my favorite trial lawyers. He, with Thomas Jefferson and Benjamin Franklin, wrote the Declaration of Independence and became our second president. Today is the 190<sup>th</sup> anniversary of his death (along with Thomas Jefferson).

He is a true American hero for standing up for the rule of law against public opinion.

He defended the British troops that shot Americans in the Boston Massacre. Defending them was very unpopular with regular newspaper stories by Samuel Adams and others against the soldiers and John Adams. (You think the press or politics is bad now – the stories then were crazy).



The incident occurred on Mar. 5, 1770, when British troops fired into a rioting crowd and killed five men. The prosecution of Captain Thomas Preston was separated from that of his men because they had different standards of guilt.



The jury assembled in the Boston Massacre trial did not include anyone from Boston. This was done to ensure a fair trial of the British. The trial was also delayed by several months to let the emotions cool down after the shooting. In the trial, it was the first time a judge used the phrase "reasonable doubt." Here is a part of Adams' closing argument:

Gentlemen of the jury, as you are under oath to determine this cause by law and evidence; clubs they had not, and they could not defend

themselves with their bayonets against so many people; it was in the power of the sailors to kill one half or the whole of the party, if they had been so disposed; what had the soldiers to expect, when twelve persons armed with clubs, (sailors too, between whom and soldiers, there is such an antipathy, that they fight as naturally when they meet, as the elephant and Rhinoceros) were daring enough, even at the time when they were loading their guns, to come up with their clubs, and smite on their guns; what had eight soldiers to expect from such a set of people? Would it have been a prudent resolution in them, or in any body in their situation, to have stood still, to see if the sailors would knock their brains out, or not? Had they not all the reason in the world to think, that as they had done so much, they would proceed farther?

Captain Thomas and 6 of his men were acquitted; two others were found guilty of manslaughter, punished, and discharged from the army. The two guilty soldiers used a medieval relic, called the Benefit of Clergy, to escape the death penalty.

Interestingly, Adams wanted Independence Day to be July 2nd, the day that the Continental Congress voted in favor of independence. July 4th was the day that Congress passed the Declaration of Independence.

In a letter dated exactly 240 years ago last Sunday, he wrote to his wife Abigail that "I believe that (July 2nd) will be celebrated, by succeeding Generations, as the great anniversary Festival ... It ought to be solemnized with Pomp and Parade, with Shews, Games, Sports, Guns, Bells, Bonfires and Illuminations from one End of this Continent to the other from this Time forward forever more."

Happy July 4th!!!!

**Gary Burger**

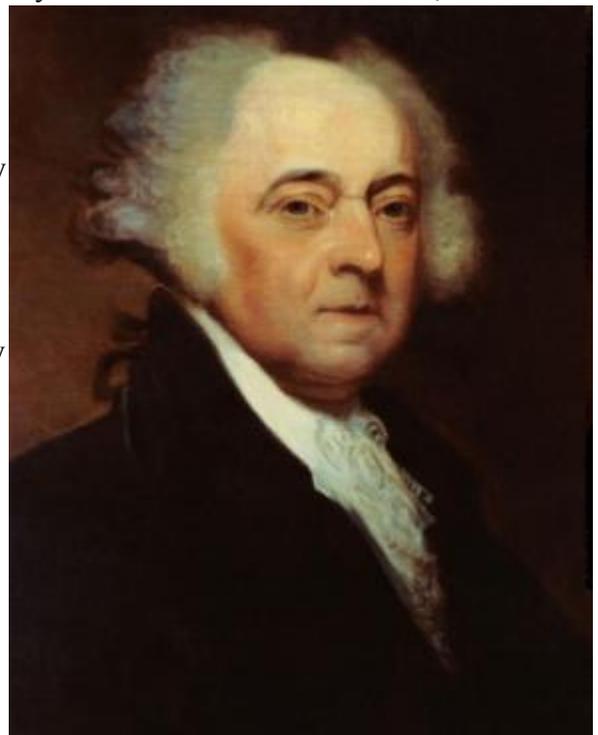
**Responses:**

“Very interesting story, thanks. Happy Independence Day to you and yours!”

-Janet

“Great email! Congratulations on new location. Happy 4th to you too (retroactive)!”

-Jeff



# Puppies

July 19, 2016

Good Morning Lawrence,

Our family summer (and maybe longer) project is fostering puppies for Stray Rescue. These are dogs that are abandoned or needed rescuing and are looking for a good home. Our kids love to help us take care of them - but it's hard to give them to their new owners when they look like this.



Many great institutions rescue dogs, but we have chosen **Stray Rescue** to volunteer. We have fostered two rounds of puppies so far and pick up our next group later today. Three puppies can be a lot of work, but it's worth it. The more you give the more you get. The kids love to help clean up after the pups (not).

Stray Rescue is a no kill shelter at Jefferson and Pine - to visit their website, [click here](#). They do amazing work for severely abused dogs and strays.

Our adult dog Jackson (above) has found his calling and fathers and herds the puppies. He loves it!!! BUT our dog King is scared to death of the little puppies, and hides up on our dining room table to be safe (he is 60 lbs). To see dogs at Stray rescue available for adoption, [click here](#). To fill out an adoption application, [click here](#). If you are interested in a super cute puppy and want to visit the ones we are getting today, email me.



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## Now for the legal news:

### **\$270,000 bike premises liability settlement**

Two weeks ago we settled a case against AT&T and Holloran Contracting for \$270,000. Our client, Kimball Nill, had a terrible bike crash but made a miraculous recovery. It happened when he was riding his bicycle on the sidewalk along Baxter Road from his house to the post office to mail a letter.

He is super safety conscious – he wore an orange vest (like a construction worker) and had on his helmet. It had just rained and the sidewalks were damp. He only had time to think there was something amiss with the sidewalk before his bicycle flipped and he crashed.

He determined after he woke up that he crashed into an area that had been dug out and the sidewalk removed - but water had pooled in and filled in this area following the rain. It was difficult to quickly discern the difference between the sidewalk and the water. He was bleeding from his face and head.

Kimball got up, was a little bit out of it and warned a jogger about the hole. He walked home pushing his bike. His wife took him to the emergency room and he received treatment - he had facial lacerations and head trauma.

Unbeknownst to Mr. Nill, AT&T had been doing work in the area. It had a sub-contractor, Holloran Contracting that had removed the sidewalk some weeks before.

Holloran Contracting did not obtain a permit to remove the sidewalk as required by St. Louis County ordinance. Neither did AT&T. Holloran Contracting and AT&T pointed the finger at

each other about who was supposed to pull the permit.

The lawsuit was both a dangerous condition of property and negligence claim against Holloran and AT&T, as well as negligence per se claims against both entities.

We deposed Art Becker, a 42 year public works official with St. Louis County. He testified that:

- AT&T and Holloran did not get a permit to do this work.
- A permit should have been requested to remove the sidewalk.
- This requirement comes from state and county ordinances.
- The main purpose behind the state and county ordinances is the health and safety of the public.
- The statute and ordinance requires that there be barricades and sidewalk closed signs and they “are a must”
- The County received a call from Ms. Nill complaining about the absent sidewalk and did not know about it. They argued with her and said no project was going on. They sent an inspector out to see who was doing the work.
- St. Louis County went and put a “sidewalk closed” sign up to warn people of the empty sidewalk, after Mr. Nill crashed.
- They did not figure out who was going this work until 7 days after Mr. Nill’s injury.
- It is important to put barricades and signs up so no one is injured when a side walk is removed.
- Defendant Holloran did not have “sidewalk closed” signs at all.
- Holloran Contracting violated the ordinance and statute by not getting a permit.
- Holloran Contracting and AT&T violated the ordinance and statute by not putting the fence up and appropriate signage.
- The County issued a notice of ordinance violation to AT&T following this incident.
- There was no information from AT&T or no documents from AT&T or Holloran that they communicated to St. Louis County about their ordinance violation.
- A sidewalk closure like that can affect pedestrians, people in wheelchairs, people on bikes, old people, kids, everybody. There was no shoulder on the road and people are forced to use this sidewalk to go along Baxter Road.
- This is one of the reasons why they have ordinances and regulations and the need for signs to protect the public.
- This is a very unusual occurrence – it’s the only one Mr. Becker is aware of and he has been doing this job for 42 years. Holloran Contracting and AT&T have failed to pull permits other times when they were doing work.

During the initial emergency room visit Mr. Nill was diagnosed with a closed head injury and facial fractures. He was admitted for observation and later released. About a month later, Kimball’s wife took him to the emergency room and stated that he “didn’t seem right” and that he had been having headaches, sleeping more than usual, was unable to dress himself, was unable to feed himself, and could not perform certain other activities. He was admitted and found to have a right frontal subdural fluid collection/hematoma that needed to be evacuated.

The next day Kimball underwent a Frontal Craniotomy for Subdural Hematoma procedure. The

neurosurgeon cut open his head, removed his skull and the dura (membrane around the brain). “As soon as the dura was opened, there was spontaneous emanation of high pressure chronic subdural fluid.” A hemorrhage was repaired as well.

Less than a week after the surgery on November 18, 2014, Kimball was taken back to the emergency room for confusion and slurred speech and hand and arm numbness and loss of use. Mr. Nill underwent treatment for his right shoulder pain shortly after the crash as well.

Over the next few months, Mr. Nill continued his follow care with his doctors. He was prescribed anti-seizure medications and underwent additional head scans to monitor him after the surgery.

Kimball made a miraculous recovery but obviously went through a lot. His injuries were deadly and he narrowly escaped death and permanent brain damage. But he completely recovered and is now working and with no real problems other than a scar under his hair. But he no longer rides a bike.

And one last puppy pic.



Thanks for reading.

## Responses

“My wife and I need a dog badly.”

-Lawrence

# Summer's End

August 29, 2016

Peggy,

Summer's over. :-(. For a last hurrah, we rode a long stretch on the Katy Trail this last weekend. From Defiance to Augusta and back. All five of us. If you haven't ridden it lately, give it a shot. It's a real asset in our area and lets one appreciate the Missouri river and our state. It goes from Machens to Clinton Missouri. For a complete map, [click here](#). Many trailheads and abutting trails as well. No cars. Great in the fall when the weather cools down. On the way back, we did riddles, and my son Jordan told a hard one. (Warning - advanced math from my 14 year old). Let me know if you can figure it out:

*Suppose you're on a game show, and you're given the choice of three doors: Behind one door is a car; behind the others, goats. You pick a door, say No. 1, and the host, who knows what's behind the doors, opens another door, say No. 3, which has a goat. He then says to you, "Do you want to pick door No. 2?" Is it to your advantage to switch your choice?*

Answer in my next email.



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## R.I.P. Tim Frymire

We represent the family of Timothy Frymire in a wrongful death and medical malpractice action against a general medical practice in Wayne County, Missouri. Tim was a wonderful young man who died on August 1, 2013 at the age of 20. He had been to his doctor's office 7 hours before his death. He had also been there 6 days before. In both of these visits, he complained of headaches. He died from complications of a brain tumor.

The nurse practitioners (he never saw a doctor) at Wayne Medical Center did not assess his headache, do a neurologic exam, do a fundoscopic exam, or assess the reason for Tim's headaches. They inaccurately diagnosed him with allergies and gave him allergy medication.

In truth, Tim's headaches were caused by a brain tumor. The coroner (whom we deposed) found the tumor in the front left lobe of Tim's brain which caused his brain to shift and caused swelling or encephalopathy. The tumor also closed a ventricle (which drains spinal fluid from the head).

The type of tumor Tim had is sometimes called a 'silent killer' as it does not manifest significant symptoms until it's too late. However, Tim did have headaches, communicated that to his family members and went to his family doctor twice for his headaches, including the day he died.

I filed medical malpractice, lost change of survival, and wrongful death claims against these medical practitioners. We obtained the opinion of both a nurse practitioner and a doctor that Tim's medical providers were negligent, caused Tim's death and decreased his chance of survival from the tumor. We hired a neurosurgeon who testified that Tim was salvageable even towards the end.

The nurse practitioners at Wayne Medical Center should have given him a neuro exam and sent him for a CT or MRI of his head.

There was a CT machine about 40 minutes away in Poplar Bluff, Missouri. Such a study would have shown edema and swelling in his brain as well as the tumor. This would have warranted rapid use of drugs or a stent to decrease the pressure in head and most likely surgical intervention to remove the brain tumor. Unfortunately, this never occurred.

We produced family members for depositions, produced our medical experts for depositions and I deposed the Defendants in this case. We established they only saw Tim for a short time; they did not do necessary tests and did not identify the brain tumor. We were scheduled to go to trial in August 2016 when the case settled. We appeared in Court in August 17, 2016 to have this settlement approved.

## **Tort Reform only helps insurance company executives.**

As you can tell from the video, Tim's family pursued this case to send a message so that other nurse practitioners and doctors would pay more attention to the type of symptoms that Tim exhibited. They also disagree with the statutory cap on wrongful damages in Missouri.

Although the statute has changed over the years, it places a cap on noneconomic damages of \$350,000. So, this puts an artificial lid on these noneconomic damages.

Insurance companies, doctors, and nurses who break well established rules of care that they should provide to patients use these caps to artificially limit their liability and avoid responsibility for their medical errors. The New England journal of medicine studied the effect of tort reform and found no reduction in integrity of care, use of "defensive medicine", use of MRI's or CT's at hospital admissions- i.e. no cost savings. [Click here](#)

Insurance industry tricked states into passing it and does nothing to change way medicine is practiced or help patients or doctors (other than to cap recoveries when doctors hurt their patients). [Click here](#) New study shows tort reforms saving are mythical. [Click here](#)

Simply put, malpractice caps do not help doctors and only help insurance companies.

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Tim was an animal lover. Our family fostered and found homes for 13 dogs this summer. If you or your family are interested in adding a dog to your family, visit Stray Rescue or [click here](#). Fall and back to school are a great time for a new dog. These five puppies are on their way to a new home. Giving forever homes to stray dogs is great public policy we should support. That we would help insurance companies rather than good Missouri and American families like the Frymires is bad public policy.

Thanks.

Responses:

“Very nice. Many years ago I rode the whole trail, but at that time it started in St. Charles and ended in Marthasville so it wasn't a big deal.”

-Bernie

# Crazy Weekend

September 12, 2016

Good morning Kenneth,

What a busy weekend in St. Louis! Art fair in Clayton, Lou Fest in Forest Park, the Flags of Valor on Art Hill, and we even did a Bar Mitzvah on Saturday. The young man who read from the Torah Saturday morning, Aaron Guller, gave moving speech about justice and how we need to zealously advocate for it today more than ever. Here's us at Lou Fest Sunday listening to some great music:

You may have read my son's riddle in my email two weeks ago. It is a famous one called the Monty Hall Problem. It became famous as a question from a reader's letter quoted in [Marilyn vos Savant's](#) "Ask Marilyn" column in Parade magazine in 1990: *Suppose you're on a game show, and you're given the choice of three doors: Behind one door is a car; behind the others, goats. You pick a door, say No. 1, and the host, who knows what's behind the doors, opens another door, say No. 3, which has a goat. He then says to you, "Do you want to pick door No. 2?" Is it to your advantage to switch your choice?*



Vos Savant's response was that the contestant should switch to the other door ([vos Savant 1990a](#)). Under the standard assumptions, contestants who switch have a  $2/3$  chance of winning the car, while contestants who stick to their choice have only a  $1/3$  chance.

Many readers of vos Savant's column refused to believe switching is beneficial despite her explanation. After the problem appeared in *Parade*, approximately 10,000 readers, including nearly 1,000 with PhD's wrote to the magazine, most of them claiming vos Savant was wrong.

Even when given explanations, simulations, and formal mathematical proofs, many people still do not accept that switching is the best strategy.

The correct result (you should switch doors) is so counterintuitive it can seem absurd, but is nevertheless demonstrably true.

## TRIAL VICTORY LAST WEEK

I had the privilege to try a car crash case last week in St. Louis County and got a \$20,000 verdict for a well deserving couple. The crash occurred on Manchester road and Wiedman. An elderly lady turned in front of them and they hit her. Not yielding the right of way to oncoming traffic can cause bad accidents. I'll spare you a picture of the car.

We fought an able defense lawyer, Art Clark, who called me the best trial lawyer in the State of Missouri in his closing argument (and then proceeded to criticize our case - nice trick).



We carefully pick juries in our cases. Missouri law provides "No person who has formed or expressed an opinion concerning the matter or any material fact in controversy in any case that may influence the judgment of such person, and no person who is kin to either party in a civil case or to the injured party shall be sworn as a juror in the same cause." [R.S.Mo.](#) section 494.470.1. And "Persons whose opinions or beliefs preclude them from following the law as declared by the court in its instructions are ineligible to serve as jurors on that case."

We are so indebted to our great citizens who serve as jurors, help resolve civil disputes, and help prosecute criminals. Pretty amazing how seriously and with such dedication people serve. It's a pleasure trying cases with good clients, juries and opposing counsel.

We put our clients on the stand and played video tapes of two chiropractors who treated them. Happily they are back working and taking care of their kids. They are immigrants from Bosnia and got to use our American judicial system for the first time.

Celebrating America in a trial and then somberly honoring it with 7,000 flags on Art Hill - each honoring a deceased Gold Star soldier who passed fighting for our rights since 9/11/2001.

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## SEPSIS MEDICAL MALPRACTICE SETTLEMENT - \$1 MILLION

It is estimated that between 28 and 50 % of the 1 million people who contract sepsis each year die. Many times they are too long undiagnosed and then not treated in a rapid manner with antibiotics to which the infection is sensitive.

Sepsis is a general term that can describe many types of infections, these are usually bacteremia infections such as pneumococcal staph, but can also be other types of infections. Sepsis is defined as infection plus systematic manifestation of infection.

We represented a family of a southern Illinois man who went to the emergency room in southern Illinois with high fever. He was not diagnosed with sepsis for 5 hours and did not receive antibiotics until over 2 hours even after he was diagnosed. This late medical treatment did not save him.

We successfully recovered and settled his medical malpractice case late last year. We were able to place a large amount of money into structured settlement accounts for his family. More detail in my next email.

Thanks for reading.

## Responses

“Gary, congratulations on your verdict and settlement.”

-Ken

“Gary, Great Article and I agree that the best course is to switch to the other door.”

-Pari

# Denial to \$125k

October 10, 2016

Ben,

Trip and fall case and claims adjuster sends me a letter: "Our investigation **does not indicate any negligence** on the part of our insured and there does not appear to be any tripping hazard that would have contributed to your client's fall."

His next letter a couple months later: "I understand that you have had a chance to review the video of your client's fall. **Will your client drop this claim or does she intent do proceed?**" We proceeded.

Page 35

1 A. Yes. They don't go over steps.  
2 Q. Do you have blind people come?  
3 A. I think we've had some blind people as well,  
4 yes.  
5 Q. And you have to be ADA compliant, right?  
6 A. Of course, yes.  
7 Q. And then as a general rule from your BS in  
8 construction design, when you're designing this stuff you  
9 want it to be safe for anybody who comes, right, all  
10 these categories of folks?  
11 A. Of course, yes, that's why you follow the codes  
12 and you hire professionals to do all that for you.  
13 Q. And if you could design it -- as you said, if  
14 this could have been made before this without the gap  
15 between the steps and the seats, that would have been  
16 preferable, right?  
17 A. I would say yes, yes.  
18 Q. And that isn't from a just because it would  
19 look prettier. The only reason that would be preferable  
20 is because of safety concerns, is that --  
21 A. No, I'd say because it would look prettier and  
22 it would be safer.  
23 Q. Okay, both?  
24 A. Both.  
25 Q. Isn't it more important to be safe than pretty?

screws to stabilize the break.

We filed a lawsuit and aggressively litigated usual. We took a corporate designee deposition of Centene and learned that they had no idea about the gap but the seats didn't fit. Designers placed the gap at the end of the rows rather than in the middle between seats. Looking at other facilities we saw that no one puts gaps for safety reasons. **The end of the depo is excerpted here where we won the case.**

Sally also did a great job in her deposition explaining exactly what happened. Sally was a commercial building manager for 30 + years and clearly explained that you do not have gaps. You could image how adults, older people, and children could get injured in such a way.

Sally was injured while leaving the theater at the Centene building in Clayton. As she walked to the end of her row, her foot slipped into a gap between the stair and the step and she fell badly fracturing her tibia and fibula above the ankle. She walked escorted out of the Centene building and got immediate medical care. She had surgery with plates and

Page 34

1 Q. Can't you put the gap in the middle and push  
2 the -- somewhere in the middle -  
3 A. You said designed without gaps, so that would  
4 be gaps. So without gaps --  
5 Q. Gaps between the -- can you do this without the  
6 gaps between the stair and the seat?  
7 A. Oh, yeah, we talked about that. Yes, if you  
8 put gaps in the middle.  
9 Q. Wouldn't that be the safer practice?  
10 A. I suppose it would, yes.  
11 Q. You don't know who's going to come into this  
12 auditorium, right?  
13 A. Absolutely, right.  
14 Q. You have places for handicap facilities, right?  
15 A. Right.  
16 Q. You have children, right?  
17 A. Right.  
18 Q. Older folks, people who aren't less physically  
19 able, right?  
20 A. Well, I would say infrequently there's children  
21 and older folks. I don't really know of any instances  
22 where there's children. Maybe there was an event or two  
23 over the last five years.  
24 Q. You have places for the wheelchair in the front  
25 rows, right?

the case, as

In fact, because of this case Centene eliminated the dangerous gap - hiring a carpenter to fill the gaps between the seats and the stairs with wood and recarpeting. It was a good responsible thing to do on the part of Centene, and we are happy that our instance persuaded them to remedy the situation.

1       **A. I'd say it's always more important to be safe**  
2       **than pretty.**  
3       **MR. BURGER: Thank you, that's all I've**  
4       **got.**

The amount paid to satisfy Sally's medical bills was about \$10,000. **We took a denial of liability and an adjuster asking us if we were going our drop our case to a \$125,000 settlement on little in special damages.**

Do not be persuaded by claims adjusters dismissing your case. They use these and other tactics to do lower recoveries. I wrote a book about questions to ask claims adjusters or lawyers to avoid these pitfalls. [Click here](#) to download it.

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## RIP Officer Blake Shelton

Last week Officer Blake Snyder was killed in the line of duty responding to a domestic disturbance in St. Louis. He left behind a wife and a two-year old son. According to the department, this was the first incident of a St. Louis County Police Officer who was killed in the line of duty since the year 2000.

It is awful and tragic that this event has taken place, and it has deeply affected the St. Louis region. When events like this transpire it's important to remember that actions speak louder than words. Join Burger Law in contributing to help his family. [Click here](#) for the backstopper's page for the Shelton family, or [click here](#) to generally donate to Backstoppers.

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## Supreme Court jury decision

I've talked about juries in these emails before. Did you know if a juror Googles incidental info about a case (contrary to MAI 2.01), it isn't necessarily grounds for a reversal? In a 4-3 decision last week, the Missouri Supreme Court in *Smotherman v. Cass Regional Medical Center*, held a juror who Googled the weather did not prejudice the outcome of the case. Namely, because the case was a slip and fall case **in a bathroom**. You can [click here](#) for the opinion.

BTW: Did you know that bathrooms are some of the most dangerous places -[click here](#)? Be safe as you sing in the shower!

## Responses:

"Awesome Gary!"  
-Benjamin

# Today Show

October 24, 2016

Hello John,

I am excited to share a commercial litigation success and introduce our [new web page](#) for these types of cases. We just finished recovering **\$105,000 on an old debt** from a not very solvent defendant.

We sued on a personal guarantee of a loan on behalf of our client, who had gone into the restaurant business with two partners about 10 years ago. The partners lost money so our client kicked them out and ran the restaurant himself. He was able to turn it around and make it profitable.

Then he heard one of the old partners, Joe Sieve, had gotten back on his feet and was working. So, we filed a lawsuit to collect on the loan and try to recover losses Sieve caused. The case was vigorously defended and Sieve went through a number of big law firms. We took his deposition and made some unusual and creative moves.

Sieve said he was given a Release when he left years before so we couldn't sue him. His copy of the Release had handwriting saying loans were released. But our client denied Sieve had ever signed the release.

So, we went and inspected the original releases and found the key changes were written **in pencil**. And, because we didn't think he really signed it till after the suit was brought, we went and found a great handwriting expert who was prepared to testify about when the documents were signed. This rare expert works with the CIA and is able to tell by the rate of evaporation in ink how long ago a document was signed. We obtained a Court Order producing the original release for semi-destructive testing.

We filed a Motion for Prejudgment Attachment of Sieve's assets which was granted by the Court. So we identified assets even before we won. We argued in briefing that you can't get out of a loan by pencil changes not countersigned by the lender - that would be crazy and we could all get out of our mortgages that way. The case had many other twists and turns and I will not detail them all here.

We also filed an extensive Motion for Summary Judgment. But, with all of these motions pending, we were able to get the Defendant to settle the case and pay a significant sum. We only settled because the Defendant was prepared to file for bankruptcy, was going to file before trial (and thereby stop the trial) and sent us bankruptcy schedules.

In all commercial litigation cases, we balance the debt size, attorney fees and collectability. We had been threatened by the Defendant with bankruptcy all along and refused to go away. In the end, we were able to get this good and significant recovery for our client. We take these cases hourly and by contingency.

## Diving on the TODAY SHOW

My second job is as a dive master at Bonne Terre Mine. I spent last weekend leading some great divers from all over the country. Bonne Terre is an amazing resource and a unique diving experience. [Click here](#) or on the photo of me for a video by the TODAY SHOW on the mine. In the video, I'm the diver with the yellow hose, blue dry suit and grey fins.

One lesson I have learned from cave diving is that if you ever have a problem in a dive, you solve that problem before you proceed on. Failure to address problems before you go forward, lead to further complications and further task loading. A seeming innocuous problem (like a tangled reel, small air leak, low battery on your light) can cascade into more and worse problems.



Apply this to life and law. Sit down and solve problem before you move forward. I often tell younger lawyers to make your hardest phone call first—tackle the hardest (oldest) case first and solve the bigger problems. Then you can move forward. The problems in a case that you don't address and deal with will only get worse later on. If you think the other side won't figure it out or it won't affect you, you are usually wrong.

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## Drug Disbarments

I read recently about two disbarments of lawyers in Missouri - too bad they did not get help sooner. Jeffrey E. Bremer was disbarred [after being caught sneaking heroin into a prison](#). Many, many ethics violations occur because lawyers get addicted to drugs or alcohol. Lawyers get addicted to drugs and alcohol at two or three times the rate of the general population. Missouri Rule of Civil Procedure 16 states:

**Substance abuse causes or contributes to incompetence and malpractice of the law by lawyers and judges, which damages the public and the legal profession. Substance abusers neglect clients, violate rules of professional and judicial conduct and commit crimes.**

Lawyer Sean Bryant was disbarred after he stole money from his trust account for drugs and alcohol. The Post wrote that he took money for child support for a client and instead supported his habit. [Click here](#) for the article.

We encounter lawyers who are affected by drug addiction, and it is hard to know what to do about it. You don't have to: Call MOLAP at [\(800\) 688-7859](tel:8006887859) or visit their website [here](#). MOLAP is a service of the Missouri Bar and has great resources. **MOLAP is confidential and free. It does not report to the Office of Chief Disciplinary Counsel and is not related to them.**

The holidays are tougher for alcoholics and drug addicts. Have the courage to help impaired lawyers or other people you think might have a problem.

Thanks.

## Responses:

“Nice going! As you know, these bankruptcy threats are phony sometimes. These people try to scare off plaintiffs with their bluster.”

-John

# Marketing CLE

November 4, 2016

Richard,

My firm is presenting another CLE on December 15, 2016 for lawyers to market and operate their business better in 2017. This is truly a unique opportunity to mix law and business.

Please [click here for more info and to register](#). Three presentations:

**LEGAL MARKETING:** Market yourself and your law business. Two great MARKETING EXPERTS, [Jim Hacking](#) and [Tyson Mutrux](#), teach how to efficiently, efficaciously and inexpensively get good cases.

**SOCIAL MEDIA 2017:** [DRIVE SOCIAL NOW](#) will teach Social Media and trends for 2017 - 2020. Transform your social media in this truly unique opportunity.

**RESOLVE TO BETTER YOUR LAW BUSINESS:** ELEVEN 2017 resolutions to better run your law firm and work the great clients you will get by smart marketing by [Burger Law](#).



# Thanks

November 21, 2016

Good morning Rita,

I so am thankful for Burger Law's first year of helping people with their legal claims. Specifically, I wanted to thank you for being a support of the firm. I hope you enjoy these emails I send a couple times a month sharing stories and lessons of my firm and the law.

Sometimes it can be hard to see all we have to be grateful for. We get caught up in our lives and are inundated with divisive political news. But take the time - the glass is (at least) half full.

Recently, I have had some great conversations with friends about the commonality and common issues that unite all us Americans. I am truly thankful for the great community we have. Too many times we focus on social media or sensationalizing news sources to demonize people with different political views than us.

But when we take the time to talk with friends or acquaintances with different political views we see we are more similar than we suppose. As we older in life (I turned 50 last week) you learn that we are all the same. We may have different marginal beliefs, but we are all the same.

Happy Thanksgiving! Now to some legal news.

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## Great CLE - Register Now!

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## Great Settlement last week!

I settled a case on Thursday November 17, 2016 at mediation. We had \$5,000 in paid medical and settled the case for \$26,000. We also had a significant settlement in medical payment benefits and were able to get our client a fantastic recovery. But what about med pay and health insurance liens? [Click here for a little more.](#)



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## CHANGES IN MED MAL CAPS COMING?

News sources are discussing coming legislative changes. Caps on damages for medical malpractice cases is a hot button issue- not only in Missouri, but other states as well. So if you have a valid medical malpractice claim in Missouri, **what are the current limits on the damages which you are entitled to?**

The 2015 bill SB 239 became law on August 28, 2015. The statute provides a limit of \$400,000 in noneconomic damages for medical malpractice personal injury cases and a \$700,000 limit on noneconomic damages for medical malpractice wrongful death cases. To view the law go [here](#). However, the 1820 Missouri Constitution provides in Section 22(a) of Article I that "the right of trial by jury as heretofore enjoyed shall remain inviolate."

This proclamation has been interpreted by Missouri Courts as meaning that causes of action at common law are "not subject to legislative limits on damages." [click here for the Supreme Court Watts opinion](#). Consequently, the caps which are established by statute do not apply to medical malpractice personal injury claims which are based on common law.

Because wrongful death claims did not exist at common law, it is safe to assume that the \$700,000 cap on noneconomic damages for medical malpractice cases resulting in wrongful death is a valid. A statutory cap placed on a medical malpractice cases which are based on common law however, likely violate the Missouri Constitutional right to a jury trial. To learn more about medical malpractice claims in Missouri we have extensive information available on our site [here](#).

As caps on medical malpractice actions tend to fluctuate every now and then, whether we will see any politically driven changes from the incoming administration has yet to be decided.

Thanks.

## Justice Loses a Champion

December 12, 2016

Hello Timothy,

Judge Rick Teitelman passed last week. He was a friend of mine and many and a shining light among lawyers, judges and our community. Many great things were said of him in print and at his memorial service. Here are links to his [Wikipedia page](#), [Supreme Court profile page](#), and [Post Dispatch obituary](#).

He was a humble but brilliant lawyer and judge who dedicated himself to serving the poor and underprivileged in accessing justice. He is an inspiration to me.

One of his most famous decisions was [Watts v. Cox Medical Centers](#), a 2012 ruling that threw out the state's cap on noneconomic damages in medical malpractice cases, overturning a 20-year-old case to the contrary.



The ruling strengthened the right to trial by jury in Missouri. Tort reform does not reduce physician insurance premiums or foster better business. [See blog on this.](#) Rather it is arbitrary and caps exposure for bad doctors we do not want. But Judge Teitelman was not worried about the politics of it - rather the rule of law, enforcing the 7th Amendment and helping victims of medical malpractice. Here's a [short blog with some of his more notable cases.](#)

To send a gift to Legal Services in Honor of Judge Teitelman, [click here](#). On the website "Support LSEM" page, in the "Source" drop-down menu, you have the option of selecting "Bar Campaign."

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## Special CLE - better your business\$!

All proceeds to Legal Services, as usual. Sign up now - pay between \$25 and \$100 - it goes to LSEM anyway.

My firm is presenting another CLE on **December 15, 2016** for lawyers to market and operate their business better in 2017. This is truly a unique opportunity to mix law and business. Lawyers don't like to work on Marketing and their business - this is your chance to change that.

Please [click here for more info and to register](#). Three presentations:

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**RESOLVE TO BETTER YOUR LAW BUSINESS:** ELEVEN 2017 resolutions to better run you law firm and work the great clients you will get by smart marketing. By [Burger Law](#).

We will fill up - [so register now](#). Three hours of MO CLE. Lawyers training lawyers to better serve clients. All profits go to Legal Services of Eastern Missouri.

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## Adopt a child or Family for Christmas

We all give in our own way. My wife and kids spent time this past weekend buying gifts for a family through St. Vincent DePaul Parish. They truly partner with the poor to help those in need preserve their dignity. Parents enroll in the program to get gifts, food and toys for their children. I thought I would share this opportunity if you are looking for someone to help.

**Call George Dennis if you want to adopt a kid or a family.** You tell George how many kids or families you'd like to adopt and he matches you with the available kids - he then gives you their

name, age, and their gift wish. Only one gift per kid (\$30 max) and one overall family gift (dishes, movies, towels etc.). You can email George by [clicking here](#). The phone number is [314-231-9599](#).

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## Plaintiff Waited Too Long, Says MO Appellate Court in Recent Opinion

Many clients often hesitate to contact an attorney after they've been injured. But a new Missouri Court of Appeals decision underscores the importance of having an attorney look at your case as soon as possible. A plaintiff who waited nearly 5 years to file her negligence suit waited too long, says the Southern District Court of Appeals in a new opinion.

The plaintiff, a Camden County woman, was being treated at a medical clinic. As she leaned against an examination table, the table slid forward, unexpectedly. Clinic staff had neglected to lock the wheels. The plaintiff lost her balance and fell violently, fracturing her hip. She sued the clinic on a basic negligence claim.

Normally, suits involving medical treatment are considered medical malpractice claims and carry 2-year deadlines (known as statutes of limitation), within which plaintiffs must file suit. Negligence outside the medical treatment context normally has a 5-year filing deadline. In filing a general negligence suit against the clinic, the plaintiff was trying to avoid the harsh 2-year deadline.

However, the Court of Appeals held that even though the case resembled common "slip and fall" cases, the crux of the suit was negligence in the context of receiving medical treatment - the plaintiff had simply waited too long to file suit.

This new Court of Appeals decision is a cautionary tale. The moral of the story is this: if you or your family get injured in an accident of any kind, it's vitally important for you or for them to get in touch with their attorney as soon as possible.

This is important to preserve evidence and information, but it's also extremely important so that deadlines aren't missed. Time flies. Don't wait until it's too late. You can read the opinion [here](#).

Thanks.

## Responses

"Sorry to hear about your friend. My condolences."  
-Tim

"Gary, that's a nice tribute to Judge Teitelman. He was a lovely man who truly was committed to justice and I hope that he will be remembered."  
-Bonnie

# Happy Holidays

December 19, 2016

Good Morning Francis,

I've had a rewarding first year at my new firm, Burger Law. I appreciate all the clients, lawyers and friends who support us. **Thanks.**

To celebrate we had a Christmas gathering at our house Saturday night. This part of the year is great to be with family and friends and take time to connect and appreciate our relationships. Gratitude for what we have and hope and bright plans for the New Year.

And mandatory family pic with Santa.



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## CLE Success!!

And to get ready for next year, Burger Law hosted a day-long legal marketing and management CLE at its downtown St. Louis office. We were honored by a strong attendance by colleagues. Amazing and robust education in marketing ([email me](#) or [call Casey](#) if you want the materials). Look below for our main take-aways if you couldn't make it, but first some attendee comments: "Thank you- **more useful and enlightening information than any CLE program I've attended in a long time.**"

"Great job-lots of content and we can simply choose how/what we want to follow up on!"

"Go to this CLE Period. Best value"

"Best use of an afternoon I could imagine. It reinforced same things I knew and taught me a lot of new things. Highly recommended."

"It was **amazing**."

"Wish I had heard those 30 to 40 years ago"

"This was **great, informative, thorough and original**"

"Great seminar, introduced many topics that I had little prior knowledge, worthwhile experience."

Look for our next one in 2017.

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## CLE Take-aways

### Marketing Basics for Lawyers

Recognize that Rome Wasn't Built in a Day. To become seriously successful as a legal marketer, you have to **commit to learning**. There are a variety of books, podcasts, and blogs that can help you gradually become a smarter and better marketer.

**Focus your practice and your marketing on what you do best.** Eliminate the breadth of your practice and home-in on YOUR niche. The better you're able to describe what you do in a single thought, the more successful you become as a marketer.

How do you track your leads? You probably already pay a great deal of money for leads. Once you get them, what do you do with them? A critical first step is to begin storing your leads in a database. Next, develop a plan to market to the list.

### Top 5 Marketing Trends for 2017:

#1 80-90% of web content will be video by 2020. Increase your presence among prospective clients online by adding video content.

#2 - Snapchat - Easy to build brand awareness utilizing this social media option. Allows you to build foot traffic by offering incentives. Showcase your services and answer questions through quick videos.

#3 - Live Video Streaming - numerous options here on Facebook, Instagram, YouTube Live.

#4 - YouTube Advertising - YouTube is currently the second largest search engine on the market (owned by Google). Could be the biggest search engine by 2020.

#5 - Gmail Advertising - with over a billion users, this is a robust option, allowing marketers to target specific AdWords and devices.

## The Evolution of Facebook

Facebook changed their algorithm in 2012-2013 to limit views of business organic posts. It requires advertising in a highly sophisticated applications with many demographic data points to target marketing. And the price of advertising is reasonable for the audience reached.

Facebook is currently the largest purchaser of personal data in the US: it currently has about 40% of all data available on virtually every adult in the US. By the end of the decade, it will have about 80-90%. Facebook advertising is becoming an essential arrow in anyone's marketing quiver.

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## New Year's Resolutions for Lawyers

Practice law, run your business and market yourself. **Create, implement and nurture systems in all these three areas.** Determine your marketing plan and implement it.

**Guard Your Time, Manage It Better** - Time limitations can be a major source of stress. It becomes essential to master your own efficiency at accomplishing tasks. Part of the solution is attitudinal - put your game face on when you come to work and don't waste time on tasks which don't move the ball.

Another part of the solution is to identify the sea of minor tasks which pose obstacles for you to accomplish your most important tasks, then develop strategies for either delegating the minor tasks or accomplishing the minor tasks more efficiently.

**Relax and Have Serenity** - Don't forget to spend some time on yourself. This means taking inventory on yourself emotionally and personally. Recognize that there are many things that are outside of your control. Accept that fact and don't fixate on things that cannot be helped. Focus your mental and emotional energy over things you can control.

Establish a Marketing Plan - taking the time to develop a good marketing plan is essential to the success of your practice. Set aside time a solid chunk of time on a weekly basis to only think about marketing. Focus on incremental gains and try not to get overwhelmed.

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## 2016 - Five of this year's most significant and popular opinions.

1. [\*State v. Bazell\*](#) - Due to a legislative blunder from the 2002 Criminal Code, the Supreme Court of Missouri overturned the felony convictions of a Defendant for stealing as the charges should not have been classified as felonies. It turned out that the legislative definition of "stealing" did not include "value of property or services" as an element, and therefore the Defendant's charges should have been misdemeanors. Consequently, this decision called into question thousands of criminal convictions that involved stealing since the 2002 code was enacted.
2. [\*State ex rel. Heartland Title Services, Inc. v. Honorable Kevin D. Harrell\*](#) - In a matter of first impression, the Missouri Supreme Court examined Missouri's venue statute and whether an injury for a malpractice tort which occurred outside the state could be brought in Missouri. The

Court ruled that venue was proper in any county in Missouri as long as both subject matter and personal jurisdiction are met.

3. [\*Pestka v. State\*](#) - Back in 2015, the Missouri General Assembly passed House Bill 150 (HB 150) which placed limitations on Missouri's unemployment benefits. Subsequently, Governor Nixon vetoed the Bill from being signed into law. When the Assembly voted to override the veto, they did so during the September 2015 veto session. The Missouri Supreme Court tossed the override because only bills returned by the Governor on or after the fifth day before the end of the regular legislative session can be taken up during a September veto session.

4. [\*Mo. Petroleum Storage Tank Ins. Fund Bd. Of Directors v. Conoco Phillips Co.\*](#) - In a significant State civil procedure decision, the Missouri Supreme Court ruled that a potential intervenor does not have a right to an immediate appeal from an interlocutory order denying a motion to intervene as a matter of right. This was contrary to prior appellate court decisions which held that this type of intervention is immediately appealable.

5. [\*Mickels v. Danrad\*](#) - When a patient died of a terminal brain tumor, the family sued the defendant physician for negligently failing to diagnose the tumor on a prior date. When the trial court entered summary judgment in favor of the physician for wrongful death under Mo. Rev. Stat. 537.080.1 the Missouri Supreme Court reversed and remanded. The Court stated that the same allegations were sufficient to state a cause of action under Missouri's survivorship statute (Mo. Rev. Stat 537.020) despite being insufficient for a wrongful death claim.

Thanks.



Responses:

“Merry Christmas, Gary! I always look forward to your emails. Good stuff. Best wishes for continued success in '17.”

-Frank

# Happy 2017

January 2, 2017

Hey Stuart,

Happy New Year. I hope you plan on having a great 2017 - and hope it's a self-fulfilling prophecy. Our marketing and business CLE in December should give some pointers for this. [Email me](#) if you'd like the materials from that conference.

This is an amazing time - less than three weeks left for President Obama's tenure. Rapid changes in technology, jobs and our social fabric and norms. Rather than this being daunting, I embrace change and have it work in my business and family life.

My family brought in the New Year with a trip on Amtrak to Chicago for the weekend. See pics below.

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## END OF YEAR SETTLEMENTS

We tend to resolve a lot of cases at the end of year. Insurance companies can pay more to clear their books at the end of the year.

We represented our client Alex against Bonnie Kittrell and APC Pest Elimination. She weaved to the wrong side of the road and hit Alex's car head on. Incredibly, the insurance company completely denied the claim and would not pay any money at all to our client. When we get these cases we do one thing - we filed suit and litigated the case. We served discovery and kept pressing the case.

Alex had soft tissue injuries - but they still caused him a lot of pain. Folks in these predicaments usually are concerned about how to take care of their families and their future.

We were happy to settle Alex's case for \$90,000 and are waiting on the checks. This will go a long way to helping him in the future.



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## HOW MUCH ATTORNEY FEE TO PAY FORMER LAWYER?

We represented Catherine and just secured a \$55,000 settlement for her auto crash. She had a long legal battle - but not because of us. She had a prior lawyer who she hired and who did not do much. He signed her up in 2013 and she completed her medical care shortly thereafter.

She had called me over the years about the delay in her case - and I would call the lawyer and ask him to work quicker on the case. She is the sister of my client Brenda (for whom we got a \$305,000 settlement [read more here](#)). But he didn't.

His records show he only worked on her case less than four times over 3 plus years. She finally called and fired him and hired me. Right after she fired him they offered 30,000 to settle the case. That lawyer is asserting a 1/3 fee of the \$30,000 offered a couple days after he was fired.

He waited over a year from when she finished her medical treatment before trying to settle the case with the insurance company. And then **another year** to follow up to get a settlement offer.

He then waited another three months before responding. This three year delay with no results really impacted the client.

I am interested in any feedback I can get about how to treat the lawyer. I think I should pay him the expenses he paid out of pocket but don't think he should get a fee. **What do you think? Email me and let me know.**



## FEE DISPUTE RULES

Did you know the Missouri Ethics rules say that any fee dispute should not be litigated and instead should be referred to the fee dispute committee of the Missouri Bar?

Rule 4-1.5 (f) states: "When a fee dispute arises between a lawyer and a client, the lawyer shall conscientiously consider participating in the appropriate fee dispute resolution program. This does not apply if a fee is set by statute or by a court or administrative agency with authority to determine the fee." [Click here for the entire Rule 1.5.](#)

Know the two most complained of ethics rule violations? Answer in next email.

Thanks.

Gary Burger



### Response

“Happy New Year Gary!! Me and Tom love your Gmail’s!! We enjoy the photos of your family!! Me and Tom are due to be grandparents this February!!! And we have 2 grandchildren from our daughter in law's first marriage!!! Very exciting times!!! Hope you continue to send wonderful Gmail's!!! Hope you and your beautiful family have a great year and look forward to hearing from you again!!! Take care old friend!!”

-Sheila

# Happy MLK Day

January 15, 2017

Good morning Eric,

There's a lot written about Dr. King, but I thought I would share a story about a **trial involving him**. In 1956, King was indicted by the Montgomery County Grand Jury for his boycott of the Montgomery City Lines, Inc.

Dr. King was tried as a criminal defendant for violating an Alabama statute that outlawed boycotts against businesses when he boycotted the Montgomery City bus line. He was represented by legendary trial lawyer Fred Gray who **presented evidence of the abuse blacks suffered from Montgomery bus drivers**.

One woman testified her husband was killed by Montgomery police after a confrontation with a bus driver over a fare. They called 31 witnesses over the 4 day trial to try to prove the propriety of the boycott. The presented an impressive case.

But at the end of the trial, the judge found King guilty and fined him \$500 and \$500 in court costs. This doesn't sound like a lot, but its **\$8,825 in today's dollars**. So he appealed - and lost. The court converted the fine to 386 days in jail - from a fine to jail time. King's lawyer was amazing but was fighting entrenched white supremacy. [Learn more about Fred Gray here.](#)

King said: "I was optimistic enough to hope for the best but realistic enough to prepare for the worst. This will not mar or diminish in any way my interest in the protest. We will continue to protest in the same spirit of nonviolence and passive resistance, using the weapon of love".

Another appeal failed - King missed the 60-day appeal deadline. King paid the fine in December 1957. This shows the power white state officials used against King and his compatriots in the 1950s and 60s.

His remarkable civil disobedience was an amazing and effective tool to radically change America. He was **arrested 30 times** and was later jailed in Alabama - and wrote his famous [Letter from a Birmingham Jail](#) on April 16, 1963.

We are indebted to lawyers like Mr. Gray and heroes like Congressman John Lewis who fought and suffered for African Americans. And by 1964 he was behind President Johnson when he signed the Civil Rights Act of 1964.



Dr. King is seen above with many politicians - republican and democrat. **He was in neither party and never endorsed a political candidate.** He did say: "I don't think the Republican Party is a party full of the almighty God nor is the Democratic Party. They both have weaknesses ... And I'm not inextricably bound to either party."

Did you know that Martin Luther King will be featured on the new \$5 bill? [Click here for Wikipedia link.](#)

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## Put Up or Shut Up

We have many instances where insurance companies and corporations don't do the right thing. We file lawsuits and push cases to get justice. We had **three examples** of this last week.

**First**, we represent Stanley Parker and Kelvin Haynes in an **auto crash case**. The insurance company, ELCO Insurance, gave a very low offer. We were not going to take it, so we filed a lawsuit. Unfortunately, the defendant dodged service and was from another country. It literally took us 9 months to serve this person. When she did get served, a lawyer contacted me and said that she had no insurance and no money.

However, I knew she did and sent the Petition to the claims adjuster, who was not offering any money. This is the same claims adjuster who refused to accept service for his insured and did nothing to try to fairly adjust the case as they are required to do under state law. [Here are your rights in dealing with insurance companies.](#)

Well, we advised the insurer that we obtained service, so now they want to talk settlement and offer additional money in the case. Justice delayed is justice denied. We will keep pushing. Insurance companies delay to get advantage. Aggressive lawyers add value to cases.

**Second**, we represent a family in a **wrongful death medical malpractice case**. Mercy Hospital refused to give us records of medical care he received shortly before his death. These are critical in the case for our expert to review. We have been pushing for this for over 60 days, and we keep getting the run around.

It is sometimes difficult to get wrongful death cases because the defendants try to say that the immediate family members are not authorized representatives. But we represented the whole family of this deceased person. We sent letters, made phone calls, and sent emails and still Mercy would not give us the records.

So, we prepared a Petition under [MO Rev. Statute §191.227](#) to sue to get the medical records. As soon as they saw that, they capitulated and sent us the 250 pages of records immediately as an attachment in a secure email. This statute is an effective way to get medical records.

**Lastly**, we are pursuing a **class action claim for bad faith refusal to settle** against an Illinois insurance company. We went and won a major motion to compel requiring them to produce all complaints about how Unique insurance treats its customers in uninsured motorist cases. More to come on that front later.

I advocate safety often in my job - anything unsafe about my daughter Audrey cutting off my winter mustache?

Gary Burger



Responses:

“Go Audrey Go!!! Best chuckle of the day!”

-Ric

# Nasty Trial Lawyers

January 29, 2017

Hey Thomas,

Governor Greitens came down pretty hard on trial lawyers last week in his State of the State speech: Missouri attracts the “nastiest lawyers,” “our judicial system is broken,” and the time is up “for the trial lawyers who have broken it.”

St. Louis recently ranked as #1 on the The American Tort Reform Association’s [annual list of “Judicial Hellholes.”](#) We got this ranking because of three jury verdicts in talcum powder cases totaling \$197 million dollars. These are pretty consistent verdicts and the evidence about the defendant's conduct was pretty damning.

But that's still a lot of money and can be seen as irresponsible. Insurance companies and big corporations **use these verdicts to sway the public** against our legal system and the 7th Amendment. ATRA's members are Fortune 500 companies like AIG, General Electric, Geico, Dow and others. For more about use of verdicts to affect politics, our legal system and tort reform. The movie [Hot Coffee and its website](#) well discuss this issue.

To the contrary, I and the other lawyers I know don't look on Missouri's judicial system as broken or out of whack. **We have pretty balanced judges and juries who rule fairly.** Wholesale legal changes such as changing the Missouri plan for selecting judges, imposing caps on recovery or other permanent changes seems arbitrary and unwarranted to address three verdicts in a distinct legal battle.

Those verdicts do not inform anyone about my cases or clients. I am not a nasty lawyer, but one who takes his oath and profession seriously and seeks daily to advance it. Insurers and corporations are not disadvantaged by our judicial system - to the contrary it's the only place an individual can combat them.

The St. Louis Post Dispatch had a [great article](#) discussing how verdicts can correct injustices to ordinary citizens. There are many examples of how caps or other tort reform proposals would hurt the future injured (who don't have much of a political voice).

Here's a link to a blog last year of my [top 10 ironies of tort reform](#). Here's three:

1) Legislators try to wreck your 7th amendment right to a jury trial, while zealously protecting your 2nd amendment right to bear arms. Both are important and should be protected.

2) **Elected officials who try to pass tort reform must believe that voters who are smart enough to elect their representatives are not smart enough to sit on juries and evaluate cases competently.**

3) Jury verdicts are not going up or out of control, rather **insurance companies lose money on stock investments and other speculation.** But the legislature pushes this subject over and over again – an insult to the facts and us citizens.

## STREET SURVIVAL FOR TEENS

Shout out to my friend Duke Niedringhaus of J.W. Terrell who taught me about teen driving risks the other day. Duke does great work teaching teen drivers to be safer on the roads (in addition to insuring people and businesses). For years now, Duke has taught in the Street Survival program put on 4 times a year at the St. Charles Family Area.

This program teaches young drivers how to handle and react in emergency driving conditions. Too often the first time a new driver encounters a surprising condition is on the roadway in the middle of an emergency. Safe Streets teaches defensive driving and safe driving techniques to avoid crashes and minimize injuries.

Great opportunity to teach and protect teen drivers. [Click here for important info on Teen Driving Risks](#) and for more info on [Safe Streets click here](#). **20% of all driving deaths occur while a teen is driving.**

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## IN THE NEWS

Our firm was featured again last week in the Missouri Lawyer Weekly for a slip and fall settlement for \$125,000. [Click here for the PDF of the article and more information about this great victory.](#)



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## WOMEN PATRIOTS

I am so proud of my wife and mom for exercising their First Amendment Right last weekend in Washington, D.C. Regardless of your political view, the right to march and express your ideas is

the cornerstone of American Liberty. President Trump tweeted about the marches: **Peaceful protests are a hallmark of our democracy. Even if I don't always agree, I recognize the rights of people to express their views.**

**Thanks for Kristen and Joan making the trip to Washington, D.C. to remind us Americans how important honoring and respecting women's rights are.** People can minimize that cause, but it was only a couple decades ago that there were almost no women lawyers, doctors, or businesspeople.

When my mom became a lawyer there were no female judges in the State of Missouri and few women in the courthouse. My mom and many other women worked hard to establish respected, safe, and equal working environments for all women and we all (not just women) stand on their shoulders.

So, thanks again to them, and anyone else, who stands up for what they believe in. With the divisiveness we see in America policies today, it is more important than ever to empathize and respect others' views, even if we don't stand in their shoes.

And here's us at yesterday's protest at Lambert Airport. I don't mean to be too political but **freedom of religion is pretty basic.**

Thanks.

Gary Burger



## Responses:

“Can’t say that I agreed with his stance concerning this topic either. If a jury trial lacks integrity and sustains incompetence’s, well then, I suppose we should release over half our offender population.”

-Tom

“That’s great your mom and Kristen made the trip to DC. Fran, her mom and sister did as well. Who let that loon in the White House?”

-David

# Supreme Court Marketing

February 12, 2017

Good morning Darin,

On my Facebook and twitter feeds I noticed ads for Supreme Court Justice Nominee Neil Gorsuch. I was surprised, looked into it and thought I would share my findings and some history about nominees running for a majority Senate vote for the nation's highest court.

The ads try to paint him as mainstream and not Scalia-like. His [views though are pretty clear](#) and would likely follow the Justice he is replacing. But he is certainly [qualified](#). A group called [Judicial Crisis Network](#) has begun a \$10 million ad campaign to support him.

The ads appear to have a multi-pronged strategy. They are being run in States with Dem senators who are seen as being vulnerable in upcoming re-election battles. They are trying to bolster support for Gorsuch. Click [here](#) and [here](#) to learn more.

The group has a coalition of support on the right and is meant to provide support to nominees who support key issues - e.g., gun rights, anti-abortion, etc. Part of the group's goal is to provide additional narratives in the media.

The group is run by a former law clerk to Justice Clarence Thomas. The connection to Thomas makes sense as powerful ads savaged Thomas for his conduct towards Anita Hill twenty five years ago. [Learn more about Thomas negative campaigns](#) and [here](#) for President Bush's denunciation of them.

There have also been [ads against Justice Kagan](#) by the NRA. There might be more of a fight because President Obama's nominee Merrick Garland was not confirmed for the last 10 months of his presidency.

The Supreme Court is such a political job with court watchers and media focus continually. And it's long been so with many Supreme Court justices having run and won elected office. Justice O'Connor is the last elected official to serve on the high court. Great historical article [here](#) about elected Justices.

I doubt the framers contemplated this drama when they wrote in Article Two of the Constitution that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the Supreme Court..." Although originalist Gorsuch may disagree with me.

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## Burning Man \$110,000 Work Comp Settlement

We represented Kelli in a Workers Compensation case for an injury she suffered at the Burning Man Festival in Blackrock City, Nevada. How did we win this claim in Missouri for a Burning Man volunteer?

In 2014 Kelli attended her 7th festival and was officially appointed a “ranger,” who protects revelers at the end of the festival when the “man burn” occurs. We claimed a military grade laser hit her face causing blindness in one eye and significant degradation of vision in the other. We began representing Kelli in 2016, a year and half after her injury. By that time, the time limit to file a Nevada Workers’ Compensation claim had expired (problem 1). Nevada has strict rules about work comp being the exclusive remedy for an on the job injury.

The Burning Man organization had filed an injury report through their insurer in Missouri and provided benefits to Kelli as well. Under [NRS 616A.020\(6\)](#), she gets no other compensation under any law anywhere.



So we pursued the claim in Missouri where Kelli lives. But she was a volunteer and work comp claims and settlements rest on the wage of the employee (problem 2).

Under a [1981 Missouri Supreme Court case](#), an uncompensated worker who “is in the service of an employer and that employer exercise control, or as the right of control, over the worker”, can recover under work comp.

We look to wage rates for similar services by employees of that employer or any other employer. In Kelli’s case we prepared evidence and documents about the wage and wages for security guards, which is what Kelli was doing at the time.

The Employer/Insurer raised other defenses as well (problems 3,4) like the connectedness of the eye injury to the incident at Burning Man and her level of sight. Kelli had worked for numerous days after this incident with the laser and her initial complaints of treatment to her providers were not clear as they could have been about her eye damage.

We were able to get a significant recovery set aside for Kelli’s future. If you have any other questions regarding Workers’ Compensation or strange and unusual Workers’ Compensation click here for [Burger Law’s Worker’s Compensation page](#) and [blogs](#).

## Call your elected official about Tort Reform

The Missouri Legislature is hard at work trying to change our Missouri Court system [to help bad businesses that hurt Missourians](#). Efforts are being fueled by lobbyists and big corporations. [Learn more](#) about the Missouri shingle maker trying to change consumer laws. Law makers are trying to change Missouri's justice system, which is [a model for the country](#). They are trying to make it easier to discriminate against Missourians, protect those who commit medical errors and limit recovery against defendants who kill people. This is not a joke. You can find your Missouri Senator by clicking [here](#). Please call them to oppose Senate bills 5, 43, 45, 237.  
Thanks.

Gary Burger

## Responses

“Gary, a side note to your note, two of our left-leaning law clerks (who hated had Scalia) had Gorsuch as their Anti-Trust professor at Colorado University, and they loved him. They also support his nomination. Despite his previous ruling and Scalia letter of the law interpretation, they think he will be fair, with fair being a relative term. Just thought you would find this interesting.”

-Darin

“Hi, Gary. We've never met, but I wanted to let you know that I enjoy reading your e-mails. They are very well crafted and informative. Thank you for the good work. Please keep 'em coming!”

- Steve

# Spring Break Search

February 27, 2017

I'm going to Mexico with my family for spring break in a few weeks and we are ready for our phones and computers to be searched. I always assume my luggage is fair game, but I've been reading about U.S. Citizens being detained and ordered to open phones.

Apparently Americans have to give broad access to phone and computer content (emails, texts and social media) when [leaving or returning](#) to the U.S. On Saturday, Muhammad Ali Jr. was detained coming back to the country (and asked whether he was a Muslim). [Learn more here](#). A U.S. born NASA scientist had his [work phone seized](#) at the airport.

Can they do that? **Yes**. Border agents have **broad authority to search without cause**, and even more with a little cause. Despite the recent attention - it's not just our current president - 4,444 phones were searched at borders in 2015.

The Fourth Amendment guarantees citizens the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." But searches at our international borders by customs officials without probable cause and without a warrant are deemed "reasonable" by courts.

The **border search doctrine** also applies to stops and searches at the functional equivalent of a border (airplane or boat) and applies equally to searches of persons and property exiting or entering America. A U.S. Citizen artist was recently [detained for three hours in Arizona](#) for sketching. An airport at which an international flight touches down is a border under the law.

Searches and seizures of computers or phones at airports have been found to be constitutionally reasonable in many instances, often as the subject of a routine border search not requiring reasonable suspicion of criminal activity prior to acting.

And such a warrantless search **does not violate the First Amendment's guarantee of freedom of speech**. The government's power is at its zenith at borders, so ten cuidado (be careful). If you don't surrender your passwords, you can be detained and they can copy your phone or hard drive. In one case - taking a hard drive 150 miles from a border to be copied was not unreasonable. Click for the following opinions: [U.S. v. Bunty, 617 F. Supp. 2d 359 \(E.D. Pa. 2008\)](#); [U.S. v. Arnold, 533 F.3d 1003 \(9th Cir. 2008\)](#); [People v. Endacott, 164 Cal. App. 4th 1346, 79 Cal. Rptr. 3d 907 \(2d Dist. 2008\)](#); [United States v. Kim, 2015 WL 2148070 \(D.D.C. 2015\)](#).

It seems unfair to not have these constitutional protections for citizens at our borders. Especially when this power is not judiciously used.

I likely look too white to be vigorously searched. And if they do make me open my phone - they'll only get pictures of kids and dogs.

## New Illinois Office

Burger Law has opened a Belleville, Illinois office. I have represented injured folks in Illinois since 1993. If you have any legal needs in Illinois (or anywhere) email me or call (including our IL number - [\(618\) 272-2222](tel:6182722222).) For our Google listing, [Click here](#).

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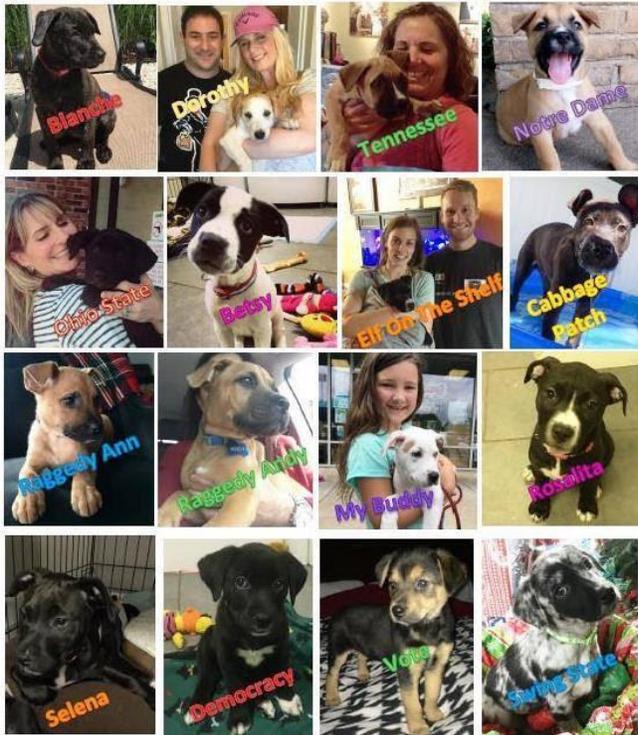
## Shameless Puppy Plug

My amazing wife Kristen and I fostered 16 puppies last year and found them forever homes. We are committed to fostering and adopting out **17 dogs in 2017**. It's a whole family effort and we have a blast with it.

We're off to a great start and have adopted out three this year (and are bringing more in). If you or someone you know is considering a dog or puppy send me an email or give me a call. I'll let you know what our inventory looks like. Help us make our goal.

Or you can [visit Stray Rescue here](#), or the [dogs they have for adoption here](#).

### Burger Fosters 2016



## Shameless Puppy Mills

Do you know that Missouri is the **worst State in the entire Country** for puppy mills? We have the [most problem puppy mills](#). Pictures are worth a thousand words - here's a link for [MO puppy mill images](#). Be warned, it's sad.

Did you know that Gov. Eric Greitens plans to cut more than \$433,000 from the Animal Care Facilities Act Program, the program that oversees puppy mill inspections? That won't help. [Learn more](#) here. You can contact him at P.O. Box 720, Jefferson City, MO 65102, call him at [\(573\) 751-3222](#), or [click this link](#).

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## Work Comp and More

We recently settled a **shoulder surgery workers' compensation case for \$50,000**. This was even more than my demand sent last summer. The client hurt his shoulder, had surgery and went back to work without restrictions. When the employers' insurance company didn't settle, we got a disability rating for our client. This rating is needed to calculate the lump sum permanent partial disability settlement to settle and finish the claim.

Our rating physician (who is great) figured out our client needed more medical treatment and a post-surgery MRI. The client went back to his surgeon, but the company doctor didn't see the continuing problems we documented. He said he was fine and gave a very low rating.

We mediated the case and prepared to bring in witnesses and physicians to talk about his real disability. We insisted on full value for his claim - and got it.

Our client did everything right in his claim (and in hiring us - ha). But do you know the **top mistakes folks make after they are injured on the job?**

They include failure to tell their employer or fill out an injury report, and not getting immediate and appropriate medical care or denying the incident was work related or minimizing it to help their employer. [Learn more](#) in a recent blog I did for more work comp mistakes and thorough analysis.

And if you want to know the **10 mistakes people make in their car crash cases**, [click here](#) to get a free book I wrote.

Thanks.

Gary Burger

## Response

“Gary - just got back from the Baja and didn't have any problems at either border, unless you count Bill having to surrender a pair of cuticle scissors and a shell. It was great! Saw the gray whales (moms and babies in Magdalena Bay) and blue whales and a fin back plus dolphins in the Sea of Cortez. Have a great trip!”

-Sue

# Spring Forward

March 13, 2017

Good morning Gerard,

Springing forward for daylight savings time signals spring and renewal. Of course it happens with snow on the ground in St. Louis. Hope you have a good spring. I'm psyched to hang with my family over spring break next week. But first to CLE, class actions and another auto crash success.

We had a fun in our CLE last December learning marketing and renewing our legal businesses. Since then I've been asking friends and CLE attendees what else they want to learn. My top responses were: how to present and counter expert witness testimony; how to negotiate and resolve liens in PI cases; and to share some of our class action successes and tactics. So, without further ado:

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## April 27, 2017 CLE: LIENS, CLASS ACTIONS AND EXPERTS MADE EASY.

Renew and focus your practice with me and [Michael Flannery](#) of [Cuneo Gilbert & LaDuca](#). We have 50 combined years of experience to share. We will spend 4 hours with you - three on thorough and cutting edge topics and one round tabling your toughest cases and legal issues to settle and solve them.

Please [CLICK HERE for more info and to REGISTER](#). Three presentations:

**HOW TO REDUCE AND RESOLVE EVERY KIND OF LIEN** - My very successful techniques, motions, letters and law. Getting good \$\$ from the defendant is only half the battle.

**CLASS ACTION LAW, STRATEGY AND SUCCESS** - Mike Flannery teaches how to identify, litigate and succeed in class action cases. He has successfully recovered in class cases across the county in many areas, including FLSA, wage and hour, antitrust, unfair business practices and discrimination.

**ADVANCED EXPERT TESTIMONY - DIRECT AND CROSS** - Mike and Gary will teach how to present direct testimony of doctors, economists, voc rehab and other experts on liability and damages; and will share cross examination techniques to undermine the opposition.

Please [Register ASAP](#). Three hours of MO CLE.

Gary and Mike will round-table attendee's tough cases and legal issues for at least an hour after to help find great solutions and strategies. This is what we do - please join us.

As usual, all profit from this CLE will be paid to Legal Services of Eastern Missouri. I am going to try to place all our funds we earn from CLE's this year in to the Rick Teitelman Memorial Fund that is being organized at Legal Services.

## **Certified class action case set for trial Nov. 1**

The Circuit Court of Cole County has certified a class action of employees of the Missouri Department of Corrections who worked as a Corrections Officer I or Corrections Officer II and appointed me class counsel. We recently set the case for trial November 1, 2017.

We allege the Missouri DOC does not pay straight-time or overtime wages for pre- and post-shift activities which the DOC requires employees to perform. We are requesting the DOC change this policy now and in the future, and compensate all class members for the unpaid time they spent performing pre- and post-shift activities.

The Court ruled we cannot maintain claims under the FLSA or under Missouri's minimum wage and overtime law. But we also seek damages under breach of contract and equitable remedies, i.e. the unjust enrichment obtained by the MDOC for pre- and post-shift activities completed by CO I and CO II employees that was not paid.

The Department of Corrections denies that the pre- and post-shift activities identified by Plaintiffs are compensable and that it must compensate employees for time spent performing those activities. It raises several affirmative defenses, including that the time spent on such activities is small, or de minimis, and that the activities are pre- or post-work activities that are not compensable under applicable law.

Here are links to [our website page](#), the [Order granting certification](#), our [Memorandum in Opposition to Summary Judgment](#), and our Extensive [Facts in Opposition to Summary Judgment](#).

Please [call](#) or [email me](#) if you have any information to assist us in this claim.

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## **Auto Crash Victory**

Last week we settled a case for Darrel for \$100,000 and are now pursuing his underinsured motorist claim. Darrel was traveling west on Gravois on his way home from work. As he was entering the intersection another car turned left in front of him and another vehicle (and failed to yield the right of way to them).

Both cars violently crashed into the bad driver's car and sent it off the roadway. The impact shoved Darrel forward into the steering wheel. The police did a great accident reconstruction in this case. They identified witnesses, positions of vehicles, and a detailed diagram drawing. This really helped prove liability in the case.

Darrel is a veteran, and a former client of mine that I previously represented in another car crash. He had a previous cervical fusion from C4 through C7 in his neck. In the Gravois road incident he reinjured himself and was diagnosed in the ER with a fractured sternum. That's significant – but there's no treatment for a fractured sternum. You just have to sit and deal with the pain while healing.

The x-rays themselves did not reveal the fracture line but saw buckling of the sternum which indicated a fracture to the physicians. He also had a whiplash neck injury. He did physical therapy. A challenge in this case was connecting the left hip pain and right knee pain to the incident which started about a year later “without apparent injury” according to the doctors note.

Of course the insurance company wanted to pay right away, right? NOT. The offer was less than \$10k. So, we filed a lawsuit and litigated the case and produced him for deposition. We made a policy limit demand and refused to move off our \$100,000 demand. As the case was gearing up for trial and we were going to take doctors depositions by video tape for trial, the Defendant realized the wisdom of our position and offered the policy limits.

Now we are making an underinsured motorist claim for his continued problems. We will keep you updated and let you know how that goes.

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## **OPENING DAY TICKETS**

Burger Law is having a promotion for **Cardinal baseball tickets for Opening Day!** [Click this link](#) to go to our Facebook page to like our Burger Law page to be entered for the drawing for the Cardinal Home Opener.

Thanks.

Gary Burger

## **Response**

“Enjoyed your sense of humor-my cousin Vinny”

-Cissy

# Sunday Funday

March 26, 2017

Happy Sunday Patrick,

My kids and I call Sunday "Sunday Funday." We try to get out and have a great time doing something fun. It takes the stress out of Sunday - i.e. knowing you have to go back to school or work the next day. Hope you got out and had fun today.

We got back from a spring break vacation - and they even let us back in the country. New phone app to fill out customs forms saved us from a long line in Denver. See below for a couple trip pics - saw amazing sea life.

## REDUCING LIENS, PRODUCING AND CROSSING EXPERTS AND CLASS ACTION LITIGATION LESSONS.

Join me on **April 27, 2017 for a 3 hour CLE**. But not just another CLE: will change the way you reduce liens, present experts and think about class actions in your practice.

Please **[CLICK HERE for more info and to REGISTER.](#)**

**HOW TO REDUCE AND RESOLVE EVERY KIND OF LIEN** - My very successful techniques, motions, letters and law. Getting good \$\$ from the defendant is only half the battle. **CLASS ACTION LAW, STRATEGY AND SUCCESS** - Mike Flannery teaches how to identify, litigate and succeed in class action cases. He has successfully recovered in class cases across the county in many areas, including FLSA, wage and hour, antitrust, unfair business practices and discrimination.

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## **NEW OFFICES**

Burger Law has **opened new offices in Belleville and Chesterfield**. If you ever need to use a conference room there email me and let me know. If you're inclined to review our new locations on Google, we would really appreciate it. [Click here to review our Belleville, IL office](#) and [here to review our Chesterfield MO office](#). Thanks!

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## **Whale Shark**

Q: Why didn't this whale shark eat me last week?



A: Professional courtesy.

(One of my favorite lawyer jokes). And they don't eat people - just plankton. Amazing fish (not mammals). [Learn more here](#).

We took video also, but it didn't turn out nearly this well, so I thought I'd share a really cool video showing how amazing these creatures are. They are super gentle and our whole family swam with them. When they are first born, they go to the very deep of the ocean to get away from predators. There they grow from 2 to 8 feet and come up to shallower bays. They can grow to 40 feet long.

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## OPENING DAY TICKETS

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Scuba diving with my son and brother.

Gary Burger

### Responses:

“Hey Buddy – Congrats on the two new locations. You are killing it!! And the two books, how do you have the time? Missed y’all at the party last night. Looks like you had a great spring break.”

-David

“Hey my Sunday was great except I had to work this evening and I'm glad your trip went well and you got. Back safe!”

- Tieri

# Lobby

April 24, 2017

Happy Monday John,

I am heading over to Jefferson City **today** to talk with our legislators about numerous tort reform efforts. Three weeks left to go in this year's session. I get that Missouri should be business friendly and we need to promote capitalism, but we also need to have fair rules to protect the safety of Missourians.

The hypocrisy is palpable. Companies and wealthy donors gave millions to candidates last December [before some donation limits were to take effect](#) to get special treatment.

Missouri Senate President Ron Richard [cashed a \\$100,000 check from the CEO of TAMKO Building Products](#) six days after introducing legislation that would effectively derail a pending class-action lawsuit against TAMKO.

The sponsor of the bill to change discrimination laws is currently being sued for race discrimination. Senator Gary Romine [is being accused of self-dealing to help himself out in his case](#).

Senate bills 43 and 45 remove protection for older people, women and minorities from job discrimination while the State pays millions to settle discrimination claims against the Department prompting a [state audit](#).

Missouri Legislators repeatedly get caught in sex scandals with subordinates and make the national news: [Mo house speaker John Diehl](#), [Sen Paul LeVota](#), [Don Gosen](#) and [here](#) for more information.

Former Fox News anchor Gretchen Carlson has [spoken out against these bills](#); Roger Ailes and Bill O'Reilly's recent departures from Fox news in the wake of sexual harassment accusations certainly support the need for continuing legal protection.

Why let the foxes guard the henhouse? The same guys who can't keep their hands off their own interns want to lessen their punishment when they get caught.

Did you know that Senate Bill 43 makes it impossible to hold the person who actually committed the unlawful act liable for their actions? It lets the bad guy off. It also lets business justifications in for discrimination and heightens the burden for proving discrimination.

Whistleblowers reveal criminal corporate action that damage the public and should be protected. But Bill 43 specifically excludes managers, supervisors, and anyone who is paid to report on the business' activities from whistleblowing protection. These are the very people who catch most illegal activity. Shouldn't we encourage the reporting of dangerous misconduct?

\$25 for three hours of CLE on April 27, 2017.

### **NEW EXPERT STATUTE AND HOW TO HANDLE IT**

**Thorough review of new expert rule and how to litigate with it. Please [CLICK HERE to REGISTER](#).**

**EXPERT TESTIMONY UNDER NEW STATUTE** - We will teach how to present direct testimony of doctors, economists, voc rehab and other experts on liability and damages under the new expert rule; and will share cross examination techniques to undermine the opposition.

**HOW TO REDUCE AND RESOLVE EVERY KIND OF LIEN** - My very successful techniques, motions, letters and law. Getting good \$\$ from the defendant is only half the battle.

**CLASS ACTION LAW, STRATEGY AND SUCCESS** - Mike Flannery teaches how to identify, litigate and succeed in class action cases. He has successfully recovered in class cases across the county in many areas, including FLSA, wage and hour, antitrust, unfair business practices and discrimination.

\$25 for registrants form here on. Price not indicative of quality. As usual, **all profit from this CLE will be paid to Legal Services of Eastern Missouri** and targeted to the new Rick Teitelman Memorial Fund.

[Register with this link](#)

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## **Victory! - Employment Disability Discrimination**

We just settled a disability discrimination case for \$84,000 cash plus nearly \$25,000 in additional benefits.

Many years ago our client, Gina, suffered a traumatic brain injury when she was attacked by a violent patient of hers and had severe PTSD. She switched careers, obtained her doctorate, and began teaching special needs students for the St. Louis County Special School District.

After many years teaching for the District, Gina was moved to a highly violent environment. Gina was consistently attacked by particularly violent students. Gina repeatedly requested to be kept away from violent students as an accommodation for her PTSD disability. The District failed to offer her an accommodation.

Gina is a highly experienced and accomplished educator and The Special School District has over 2,000 teachers placed at schools all over St. Louis County (with many safe and docile students). Instead of moving her to a safer location, the District retaliated against her by taking her out of the classroom and placing Gina in her own “office” – a broom closet! She was not permitted to teach any students, anywhere, and was forced to sit at a desk inside of a converted broom closet.

Clearly, the District was wrong to try to get her to resign. After complaining about the District's retaliation, the District retaliated against her yet again by moving her to another group of highly violent students!

Gina tried to move to other locations, and applied to nearly 40 positions within the Special School District. She received no interviews – or even call-backs. Meanwhile, younger, less educated, and less experienced teachers were awarded these positions.

The District's top offer was \$3,000. So we filed suit and extensively litigated the case. Employment Discrimination law in Missouri is complex. Here's [the statute](#). We filed two lawsuits and fought hard against the District in an administrative challenge in Cole County as well as the primary lawsuit in St. Louis County. After fighting hard for Gina, the District settled at mediation.

We're very excited for Gina, and pleased that we were able to obtain a great recovery for her. Here's a [blog I did on employment discrimination recently](#).

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## U.S. Supreme Court overturns Missouri Federal Employee Health Benefits Act Case

A recent case which originated in St. Louis was overturned by the United States Supreme Court on April 18, 2017. The case, [Coventry Health Care v. Nevils](#), involved a federal employee Plaintiff who received health benefits for an injury. The Plaintiff's health coverage was governed by the Federal Employees Health Benefits Act (FEHBA).

Nevils settled the personal injury claim. The health insurer demanded its money back for health benefits it provided. Nevils argued that Missouri law did not allow subrogation from settlement in personal injury cases and that FEHBA did not preempt Missouri law. Missouri law has long held a persona cannot assign their injury case to another person (or health insurance company).

The Missouri Supreme Court agreed, and the case advanced to the U.S. Supreme Court. After a few other procedural hurdles, the U.S. Supreme Court unanimously ruled this month that the FEHBA did in fact preempt Missouri state law. Here's the [scotus blog](#) on the case.

Plaintiffs with personal injury cases in Missouri covered by a FEHBA plan have to pay back their insurers. This is bad as plaintiffs are already undercompensated in many cases, and this will just exacerbate this. Injured people pay premiums for years for health insurance coverage and should not have to pay back insurers.

Thanks for reading. If I can ever do anything for you please email or call me.

Gary Burger

## Responses:

“Interesting. Let me know how it goes.”

- John

“...Good stuff, Gary! Your introductory background on the cronyism in Jefferson City is disturbing. Saw a recent Post-Dispatch article about how huge percentages of campaign donations to Missouri legislators are spent on ski trips to Aspen and other such things. I wrote an article for the Missouri Law Review couple years ago called ‘The Wild Mid-West: Missouri Ethics and Campaign Finance under a Narrowed Corruption Regime’ that touches on a lot of the same issues. Lots of unsavory stuff is going on over there.”

-Dan

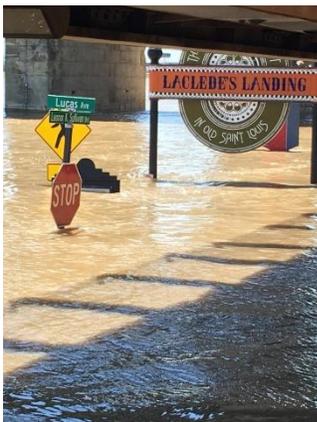
## Rain, Motorcycles, and Insurance

May 7, 2017

Good Morning Richard,

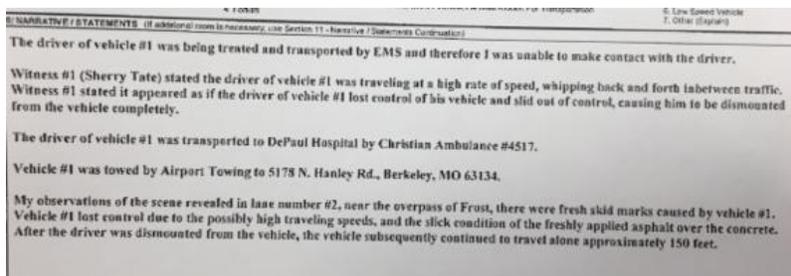
Check out how much the Mississippi has risen. I took this Friday. I also included **pics taken from my office window at the end of this email**. But first back to some law (yawn). We hopefully turn from the rainy season to better weather, remember to watch and be careful for motorcycles.

I have tried a number of **motorcycle cases**, and we just obtained an amazing \$100k result for our client and motorcycle driver Ronald Currie.



## \$100,000 for single motorcycle tough liability claim

We were faced with a single vehicle motorcycle crash where our client left his bike and sustained injuries. The sole witness was bad for us: our client was traveling at a high rate of speed, whipping back and forth between traffic. The reporting officer believed he lost control due to speeding and slick road conditions. His motorcycle continued 150 feet without a rider. Here's the report:



So, what did we do? Our client said a phantom driver (who left the scene) hit him and caused the crash. So, we made a claim again Farmers Insurance under our client's motorcycle policy. He had both uninsured and underinsured coverage in the amount of \$50,000 each. We made a demand for the full policy limits for both coverages. We refused to take anything less than the full policy limits.

We had to get full recovery on the uninsured to even be entitled to underinsured coverage. Here's a link to my [uninsured motorist page and video](#) on our website. Here's a link to my [Illinois un and underinsured blog with info on mandatory arbitrat ion](#) in Illinois.

Interestingly, because there was uninsured coverage at issue, we had the opportunity to stack coverage on Ron's other two vehicles. However, when you stack insurance policies in Missouri you only stack the Missouri minimum amount, or \$25,000. He only had two vehicles so we had no advantage to stack in the uninsured policy because he had \$50,000 in uninsured coverage on his motorcycle.

So after litigating and pursuing the case we received **full payment of \$100,000 for Ronald**. We were able to get all of his medical providers to assert liens in the case and we were able to reduce those liens. We put over \$50,000 in Ron's pocket after all fees, expenses, and medical bills were paid. We are very happy to get this amazing result.

We have had a good success in getting motorcycle recoveries. Click here for [videos and additional information on motorcycle crashes](#) and here for [other motorcycle success cases](#). If you have any questions about navigating insurance policies or succeeding in motorcycle crashes please give me a call.

## Thanks...

To the many folks who attended last week's CLE. Many commented that it was the *"best CLE they had ever attended."* For those who could not make it, **here are links to my written materials** on [New Expert Rules under HB 153 and other Expert Tips](#) and [Liens in Injury Cases and How to Resolve Them](#).

If you ever have a question in these areas please do not hesitate to call or email.

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## Protecting Puppies

I referenced "irony" about state legislators in my last email. With politicians it seems there's an endless supply. Here's more.

Mary Ann Smith, the owner of a puppy mill in Salem, Missouri, filed a defamation lawsuit in 2011 against the Humane Society. She was included in a list of Missouri's "dirty dozen"- where the Humane Society identifies our state's most egregious puppy mills. The list can be viewed [here](#).

Her son, [Jason Smith](#), is a U.S. Representative of Missouri's 8th congressional district and has fought against protecting dogs from abusive puppy mills. Jason Smith was a lead proponent for gutting the Missouri [Puppy Mill Cruelty Prevention Act](#) which became law in early 2011. The conflict of interest was well set out [in this article in Pitch](#).

The Missouri Supreme Court ruled on April 25, 2017 that Mary Ann Smith had not alleged sufficient facts to make a case for defamation and her case was consequently tossed. The HSUS successfully argued that Smith had merely stated opinions which were protected by free speech. The opinion can be viewed [here](#).

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## Rising Minimum Wage

An injunction challenging the minimum wage increase in the City of Louis was lifted last week. Effective now the minimum wage in the City of St. Louis is \$10 per hour. Click to read about [City of St. Louis Ordinance No. 70078](#).

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## Rising River

Here are three pics from last Mon, Wed and then Friday showing the quickly rising Mississippi from my office window:



Thanks.

Responses:

“Amazing he wasn’t killed...soon he won’t have to wear a helmet if he has medical insurance!”

-Richard

# Compel

May 21, 2017

Good morning Darlene,

Last week I was faced with three litigation scenarios where the opposition did not give me information and documents like they should have. Defendants play games with the rules in litigation about what they turn over. But I have long said that I am kind of like the energizer bunny- I keep going and going until we get what we are supposed to get.

Last Monday, I deposed the general manager of a defendant hotel, in which they gave me a statement of my client. This had not been disclosed before despite my requests and not prior to my client's deposition over a month ago where she told the whole story about the assault. The law in Missouri is clear that statement of an opposing party is not hearsay and must be produced in a case ([Bynote](#)). I was very surprised that this had occurred in the case. So what do I do? I wrote the other side asking for an explanation. I discovered a lot of other documents have not been turned over and we will go to court with a [Motion to Compel](#).



Then, on Tuesday May 16 we went to court for the fifth hearing on a Motion to Compel in an Illinois Class Action claim against an insurance company. We even have prior Court orders ordering them to produce information and documents about complaints from their customers. People think that if they have an uninsured motorist claim it is an easy claim because their insurance company should take care of them. This is not true, and we frequently have to fight and litigate uninsured motorist claims against insurance companies.

Regardless, again in this Motion to Compel the Judge gave the Defendant and its party an additional 30 days to get the documents to us. The reason for this delay was that this insurance company is getting its third set of lawyers. I think these lawyers keep figuring out the insurance company is hiding stuff and dropping out. Or, they figured if they get a new lawyer most courts are going to give them an additional 30 days to get me the stuff I need.

We also won our motion to compel Illinois Dept. of Insurance to turn over the many complaints against this insurance company

On Wednesday May 17, in a Workers' Compensation hardship mediation, our client's employer denies he employed our client at the time of the injury. But my client located and provided

paystubs from the company showing and proving his employment. We subpoenaed the complete records of the employer and demanded a deposition of the employer, but they won't comply.

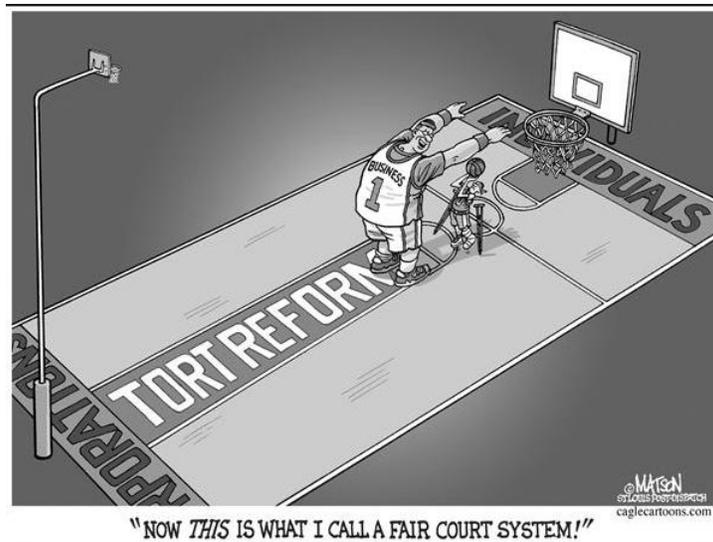
So the Court compelled them to do so and set another hearing soon. This employer is also on his third lawyer. We are proceeding to try this hardship. There are many interesting legal issues at play in this case and I joked with the opposing lawyers that once the case is over it will be the subject of a future email.

Unfortunately, most evidentiary rules at trial do not permit the jury to know all the shenanigans played by the defendants to prevent the plaintiff from getting the evidence they need. There is some misconception that plaintiffs have the upper hand and take advantage of defendants in these cases. The opposite is true. But:



### Tort Deform Extravaganza

Tort reform measures have recently been sent to the Missouri Governor's office at the close of this recent legislative session. It is still unclear what bills the Governor will or will not sign, but all of the bills below threaten Missourians, for the benefit of out of state insurance companies.



First, [Senate Bill 66](#) was passed and sent to the governor, it requires employees to meet a “motivating factor standard” for worker’s filing a workers compensation retaliation claim. In 1998, in [Crabtree v. Bugby](#), the Missouri Supreme Court, ruled that for employees to make a compensation retaliation claim, their participation in the worker’s compensation process had to be the exclusive cause of their termination.

However, the Supreme Court overruled this decision in 2014, in [Templemire v. W & M Welding, Inc.](#), finding that participation in a comp claim only had to be a contributing factor for the employee’s termination. [Senate Bill 43](#) raises the standard for employment claims, to a motivating factor standard. Raises an employer's intent to a motivating factor standard, once again making it easier for companies to retaliate against employees for filing worker’s compensation claims.

This bill was sent to the Governor’s office on May 8th. The Bill also will overrule the Missouri Supreme Court’s 2015 decision in [Greer v. Sysco Foods](#), which allowed injured workers to continue receiving temporary disability payments, after the company doctor told them they had reached “maximum medical improvement”.

Second, Under [Senate Bill 31](#) the *collateral source* rule has been changed so that Plaintiff’s medical expenses are limited to the amount actually paid for medical care. [Collateral source rules](#) prevent the defendant from taking advantage of benefits the plaintiff has. Currently the jury is advised of the total amount of medical expense and the amount paid and owed to satisfy those claims. This law will benefit insurance companies and punish responsible Plaintiffs who pay health insurance premiums.

Third, insurance companies regularly improperly deny insurance claims and under pay insurance claims. This has been the subject of litigation for 170 years in Missouri. In 1848, the Missouri Supreme Court wrestled with payments on insurance premiums in [St. Louis Insurance Company v. Robert Kyle](#).

One of the tools to protect Missouri citizens from insurance companies is to enter into an agreement pursuant to [RSMO 537.065](#). Under [House Bill 339](#) insurance companies now have permission to intervene in agreements under that statute. [R.S.Mo 537.065](#) provides protection to customers of insurance companies and protects them from companies improperly denying claims. Missouri legislators are working against Missouri residents on behalf of out of state insurance companies to protect the companies from properly paying claims.

Fourth, at the time of this email the only one of these tort reform measures actually signed by the Governor is [House Bill 153](#). HB 153 changed the Missouri Expert Witness standard to the federal *Daubert* standard. A link to our recent CLE materials on how to handle this new *Daubert* standard can be found [HERE](#). If signed, all of the above bills will go into effect on August 31st, 2017.

## Compelling Special Prosecution



The deputy attorney general, Rod J. Rosenstein, appointed former FBI director, Robert S. Mueller III as special counsel on [May 17, 2017](#). The special counsel has a unique role under the law. Under [28 CFR 600.1](#), the attorney general may appoint a special counsel to investigate and prosecute certain things if there is a ‘conflict of interest.’

Special counsel has the power to look for evidence of a possible crime, and all other powers of a federal prosecutor, all outside the chain of command under the [Justice Department](#). They can issue subpoenas, collect evidence, present their evidence to a grand jury and indict, but under current rules, all proceedings or evidence uncovered must remain [secret](#). At a trial, the special prosecutor would be the actual prosecutor trying the case.

They may file their cases in a Federal District Court {or a special Federal District Court in New York or Washington D.C. likely}. They report to US Attorney General Rosenstein, and while special counsel Mueller is ‘independent’ of the federal government, attorney general Rosenstein can fire him at any time. There is also an example of the current special prosecutor threatening Ashcroft when he was in the hospital ill to resign if he did not reauthorize Bush’s domestic [surveillance program](#).

Similar famous examples of this in the past include special prosecutor for the Whitewater investigation against President Bill Clinton and the special prosecutor for the [Watergate](#) scandal under President Richard Nixon. While these are the most famous, special counsel has been appointed [21 times over 21 years](#).

People criticized the White Water Investigation for taking 7 years with very little success and high costs. The numerous independent counsel investigations into the Clinton Administration cost the United States over [\\$40 million](#). In total, special investigations have cost the U.S. over million with very few uncovering important information they were brought on to investigate.

However, some special prosecutors have had success. Many suggest the Watergate investigation was a success since former President Richard Nixon ultimately [resigned](#). The idea originally

behind the special prosecutor was to conduct an investigation into elected officials independently of the federal government to [avoid politics](#), but they get a lot of attention as a political tool as well. As the late Justice Antonin Scalia once said, “nothing is so politically effective as the ability to charge that one’s opponent and his associates are not merely wrongheaded, naïve, ineffective, but in all probability, [‘crooks.’](#)”



Thanks.

## Summer

June 5, 2017

Happy Summer,

June marks the beginning of summer, where the living is easy - pool, vacations, no school, and warm weather.

It is also a time for me to do my yard work. Weeding, cutting down vines from trees and planting our garden. Here is a pic of a rock wall I'm building. Something about the hard work and geometry of putting rocks together is a great escape for me.



Summer safety is important, too. Guess which months have the highest incidence of teen auto crashes, water related incidents and ATV wrecks? - June, July, and August.

Summer brings [more ER visits](#), [water incidents](#), and [work injuries](#). The most dangerous month, day and time to drive? [August, Saturday, night](#). I'm writing not for us to be aware, not scare. Here's a blog and link to [teen driving training](#).

Heat stroke can strike anyone, but people who work outside and the elderly are particularly at risk. Wear loose fitting, lightly colored clothing and stay ultra-hydrated. Drink even when you don't think you need to. Early warning sign = leg cramps. People with heat stroke will not sweat (counter intuitive).

Don't leave your pet in the car. Gets hot in there quicker than you think. 16 States have laws against this. [Click here](#) for details.

It goes without saying that everyone regardless of age should wear a helmet when riding a bicycle, but I will include that reminder in here anyway. Cyclists should wear brightly colored clothing and make sure that their bikes have reflectors appropriate for dusk (and night).

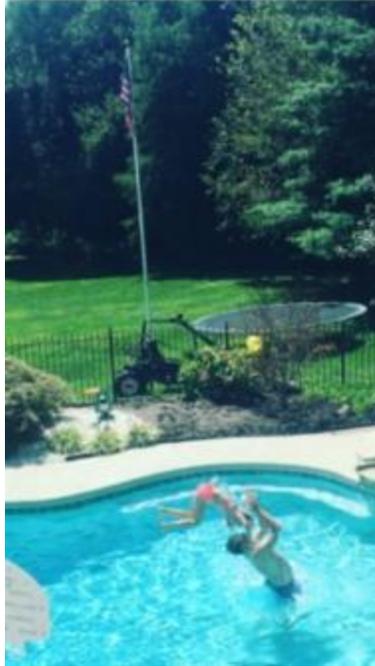
Want to not ride an ATV - read the latest CPSC annual report on ATV injuries and deaths [here](#). Do not allow children on ATVs. They are not designed to carry a passenger and you should always wear a helmet. ATVs are inherently defective as I have shown in a few cases: they have deceptively high centers of gravity and no wheel differential which cause them to too easily roll over.

Water safety and water incidents greatly increase as well. Urge them to make good decisions (tell the boys they don't have to show off). Never leave a child unattended near a body of water. It doesn't take much water for a person to drown.

Make sure that young children are equipped with proper flotation devices like water wings and life vests. Also beware of diving in water of unknown depths and never swim alone.

When boating, never operate the vessel under the influence of drugs or alcohol and always steer clear of people floating and swimming in the water.

Every year we get calls from folks with firework injuries. It is best to let sober adults handle fireworks and to keep children a safe distance away.



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## HOT CONSTITUTION SUMMER

Many know generally how the US Constitution was written (and the Broadway show Hamilton helps). It's the 230 year anniversary of the summer of 1787 - an extremely hot Philadelphia summer when [our Constitution](#) was written.

Delegates at the Constitution Convention suffered unbearable Philadelphia heat. Still, the delegates worked together and in a matter of [months](#) wrote the oldest active constitution that exists. (Yet it's taken [Illinois](#) years to agree on anything in the comfort of its air conditioned Capitol.)

The heat did cause problems. Many states were [tardy to the convention](#). When it opened on May 14th, only Pennsylvania and Virginia showed up. Eventually, enough states gathered to form a quorum, marking the official start of the convention.

Weather was the most common excuse for this tardiness. The diary of William Samuel Johnson of Connecticut is the only weather reference we have and he describes [33 of the 80 days it took as "hot" or "very hot"](#).

Despite the heat, the delegates still wanted the convention to be a [secret](#), so the windows were closed and heavy drapes were drawn. With closed windows cutting off any air flow, it's no wonder there are errors in the Constitution.

Between the final article and the delegate signatures on the Constitution's final page is an ["errata" paragraph](#) listing some of the minor errors the writer had made along with the corrections.

But it's interesting to wonder how things would be different if it had not been so hot. According to one journalist, the few times the framers got a break from the heat, morale boosted considerably and the sessions were more productive.

One example is the morning of July 13, described as "cool", when Edmund Randolph of Virginia looked to correct the language of the three-fifths ratio and how it would be applied. On another cool day, Alexander Hamilton helped resolve a conflict between a Georgia delegate and a British merchant.

The Constitutional Convention was famous for its heated debates. It begs the question -- does heat contribute to conflict? Or does cool weather just promote productivity?

Other notable hot American summers include the [summer of 1967](#) where 159 riots broke out across the United States and the [summer of 1849](#) when 80,000 immigrants rushed to California all to strike gold.

The 10 hottest summers on record [have all happened since 1998](#). And the [summer of 2017](#) is predicted to be another record breaker.

As the occasion was formal delegates wore their best wool coats - this picture reflects how hot they must have been:



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## MY FIRST CORRECTION

In my last email I talked about Special Prosecutors and their unique role in the law. It prompted this great email from a friend, which I quote with permission as **my first correction**:

Dear Mr. Burger,

Thank you so much for your informative emails; I enjoy them and I always look forward to what you have to say. However, I am a little confused about a specific matter contained within your email today titled "Compelling Special Prosecution". In your piece you stated the following:

"There is also an example of the current special prosecutor threatening Ashcroft when he was in the hospital ill to resign if he did not reauthorize Bush's domestic surveillance program."

I must respectfully take issue with your recollection or characterization of one of the key facts contained in this sentence.

It is my understanding from history that Comey and Mueller did NOT want Bush to reauthorize the domestic surveillance program, which they (Comey and Mueller) both believed was unlawful. [They] had both threatened to resign if said program were reauthorized.

Andrew Card and Alberto Gonzales were the ones who rushed to the hospital in their unsuccessful attempt to persuade a weakened, recovering Ashcroft to reauthorize this program. Here are links to articles from the L.A. Times and New York Times regarding this dramatic event: [Click [here](#), [here](#) and [here](#) for these links].

If I have somehow misinterpreted either your opinion or the facts, please let me know.

*Once again, thanks so much for your terrific seminars and emails!*

Sincerely, Bruce Bramoweth

Hope you have a happy, safe and cool summer.

## Responses:

"Nice wall!

I also like the historical mentions pretty much every time. Yours is about the only e-newsletter I get worth reading 😊"

-Edward

"I don't do 'Happy' Summers. I do however do Meaningful Summers. Thanks for including me on you mailing list. Your comments are often quite thoughtful."

-Stan

# Rescue

June 18, 2017

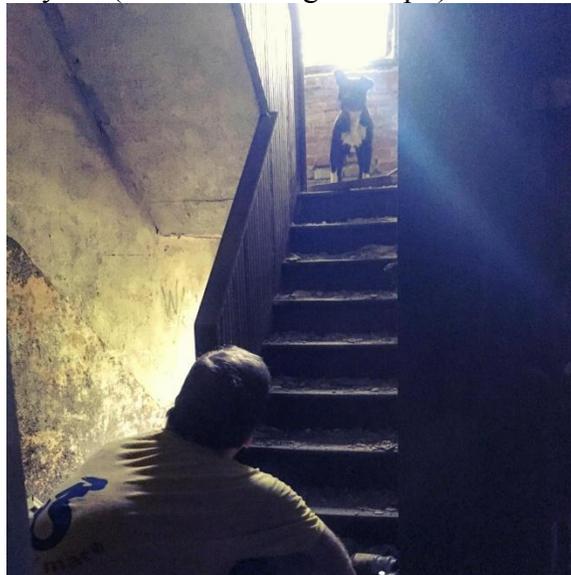
Good morning Susan,

Last Tuesday my wife Kristen and I had the opportunity to spend the day with Donna from [Stray Rescue](#). She told us about a puppy she had rescued a few weeks ago - she had seen the pup's parents. So, we went back for them.

Their dwelling was long abandoned (with most of the houses on that street); an old brick house collapsing, moldy and rotten. There were huge holes in the floor requiring careful footwork to make it into the building without dropping to the basement below. Dogs barked inside guarding their "home."

We went up the staircase, walking over old clothing and debris and rotted wood. Chunks of missing ceiling allowed light inside, and the momma dog cowered in a back room. As we approached, she fled to a tiny closet. Donna opened a can of hot dogs and began tossing them to the terrified pup, talking to her softly while continuing to move closer.

Kristen heard movement behind us and looked up to see the male dog apprehensively coming down stairs. He seemed unsure what to do – protect his home or go with us. I took a slip leash and tried to relax him, and myself (he was a strong black pit):



I went up the stairs to coax the papa dog down. He wouldn't eat the hot dog I offered but let me slip a leash over his head. He pulled back. But I gently talked to him and walked him down the stairs and out the house.

Outside he relaxed, then wagged his tail and closed his eyes as I scratched his head and petted him. The side of his neck was an open, oozing wound, punctuated by a deep hole in his ear. He did not seem to care, things were changing for him – petting, leash, care.

Momma dog was hesitant to leave the closet. She did not yet trust us, and her facial scars and broken teeth told us her reluctance well placed. We eventually carried her down the stairs and over the gaping holes in the floor to the yard with her companion. Once in Donna's jeep heading back to the shelter, she rested her tired head in my lap and closed her eyes.



As we settled Sam and Diane into their new apartments at Stray Rescue (after shots and medical attention) Donna got a call from a concerned neighbor about five to seven puppies running loose in East St. Louis. We made our way across the bridge and Donna relayed how difficult it can be to catch puppies, especially if they are hiding in a wooded area or without their momma.

We spotted three pups in the backyard, but they darted into the weedy tangle of bushes and trees. We began to comb through the overgrowth looking, and listening, for the puppies. They ran from us.

Donna suggested setting a trap – a large wire kennel with a door that would close when their weight triggered it. She poured out a can of dog food and we waited.

Two puppies approached the trap and enthusiastically began eating, but their weight did not trigger the trap to shut. You could see their ribs protruding above their bloated bellies and they dashed back into the thicket. Donna made a few adjustments to the trap and we waited again, successfully confining two pups.

Two more trap settings yielded three more puppies. The five babies huddled together in the back of Donna's jeep terrified. At stray rescue they got medical care, food and water. We named the ten week old puppies after Missouri rivers and took them to our house to foster.

Spending a day doing this made us appreciate the hard work done by folks rescuing animals in St. Louis and everywhere. Hard work that usually doesn't yield the success we had. [Click here to adopt a puppy from stray rescue.](#)



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## Motions Denied

Last week I defended 3 different motions against my client's cases, and **won all 3**. Two Motions for Summary Judgment and a repeated Motion to Quash Subpoena against me were denied. Summary Judgments can come at any stage in a case. It requests the Court rule in a parties favor when there is no dispute of the facts.

The Missouri Department of Corrections **does not pay its guards for the pre and post shift work they require them to do**. These officers have to sign in, get keys, get radios, go through metal detectors, go through air locks, and pass through different check points all the way back into a prison where they communicate with the prior shift to relieve that shift.

The State will not pay them for this work and don't pay them until they arrive at their post. The State filed and argued summary judgment against us and we prevailed. Here are links to a [page on our site devoted to this case](#) and our [200+ facts in opposition to the State's Motion](#) and our [Memorandum in Opposition](#) as well.

We also defeated a Summary Judgment Motion against us in a case against an area attorney and law firm. In that case, we allege the **attorney took over his client's sizeable business without paying** him and substantially profited therefrom. Our client had previously had a claim in Federal Court in Ohio but the lawyer and his law firm were dismissed from that case.

The defendant's argued that our case was barred by Res Judicata. This means you can't sue the same defendant a second time for the same thing if you lost the first time.

We were able to show the Court that the Defendants in our current case had been dismissed as a party in the Ohio case before a final result. They thus did not have privacy with the defendants there and we can maintain our case. We argued this summary judgment motion at the beginning of the case and succeeded in defeating it. Now to win the whole case.

In a claim we have pending in Belleville IL we subpoenaed insurance information from the Illinois Department of Insurance. We are pursuing a claim against **Unique Insurance Company for bad faith** and sought other similar incidents and other evidence of vexatious delay. The State of Illinois filed a Motion to Quash our subpoena - which we defeated.

Then they came in and filed another Motion to Quash saying it was unduly burdensome and irrelevant. We won this motion and they have been ordered to provide information and documents. Interestingly Unique Insurance Company is required by law to retain the documents we are requesting from the Illinois Department of Insurance, but have instead destroyed them.

Thanks.

Gary Burger



## Responses:

“When I read the emails like these that you send (and after going through your Facebook), I'm really glad that I chose you guys to represent me. It's easy to be a good lawyer when you have no ethics and no soul, but you seem to be a good attorney who has both.”

-Michael

“Dear Gary, Your story touched my heart. I am amazed that you have the energy to work hard during the week and spend time on the weekend helping others. Bless you and your wife, and thanks so much for sharing your story. It is inspiring to read and helps me remember that these acts of kindness are important in order to have a joyful and peaceful life.”

-Susan

# Independence

July 3, 2017

Hello Jim,

Happy Independence Day (tomorrow). We closed our office today to let our attorneys and staff enjoy the holiday and a long weekend, below I have an article about a recent settlement and ask you to google review firm. Please email me back if I can Google review your firm or business.

But first, I thought I would give you 10 surprising facts about the Declaration of Independence.

1. The Declaration was [not signed](#) on July 4th, 1776.

While the declaration was adopted by the Continental Congress on the 4th, most of the men did not sign it until August 2nd of that year and New York delegates did not even give their support until July 9th.

2. July 4th was not the day the Founders intended to be remembered as Independence Day.

[July 2nd](#) was when the Continental Congress voted on Independence and the day they thought would be remembered and celebrated as Independence Day.

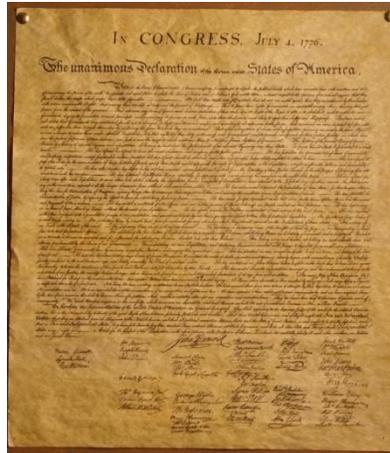
3. Signers held a wide array of [occupations](#) - 24 lawyers, 11 merchants, 9 farmers.

4. There is more than one copy.

Most people see the [original](#) Declaration on display at the National Archives in Washington, D.C. While it is the original, it is not the only one -- there were hundreds of copies made. These copies are known as the "Dunlop broadsides". They were used to spread the news of the Declaration throughout the colonies. The rebels had a great system of copying and disseminating information quickly.

5. Two of those copies have been found in the last [25 years](#).

In 1989, a Philadelphia man got very lucky when he found an original Dunlap Broadside copy in the back of a picture frame he bought at a flea market for \$4. It sold for \$8.1 million in 2000. What a find! A 26th known Dunlap broadside emerged at the British National Archives in 2009, hidden for centuries in a box of papers captured from American colonists during the Revolutionary War.



6. Three US Presidents have died on 7/4.

Thomas Jefferson, John Adams and James Monroe [all died on the Fourth of July](#). Adams and Jefferson both died on the 50th anniversary of the Declaration's passage. James Monroe died 5 years later on July 4, 1831.

7. There was a [44 year difference](#) between youngest and oldest signers.

Benjamin Franklin was the oldest signer at 70 years old. But 44 years his junior was Edward Rutledge, a lawyer from South Carolina who was only 26 at the time.

8. The movie National Treasure May Not be Way Off.

In the movie "National Treasure," Nicholas Cage's character claims that the back of the Declaration contains a treasure map written in invisible ink. That is not sure, but there is [writing on the back](#). It reads: "Original Declaration of Independence dated 4th July 1776." It's thought this was added as a label, but no one is sure when.

9. The Declaration has only left Washington D.C. twice.

The first time was when the British attacked Washington during the War of 1812, and the second time was during World War II from 1941 to 1944 when it was [stored at Fort Knox](#).

10. Every 4th of July the Liberty Bell in Philadelphia is tapped (not rung) [13 times](#) in honor of the original thirteen colonies.

Feel free to use the above to impress friends and family. Unfortunately when I share history with mine, they roll their eyes and call me Michael from the Office. I can't argue, because they are right.

## Google Reviews for BBall tics

Thanks to our friends and clients for our firm's success. As a part of our continuing effort to inform the public about their rights and the good and hard work we do, we would love it if you provided a Google Review of our firm. Click the three links below to do so.

All Google Reviews for Burger Law from June 28, 2017 through July 10, 2017 will be entered to win tickets to the July 26, 2017 Cardinals game. We go live on Facebook on July 10 for the drawing.

I picked June 28 because our great clients the Swafford Family reviewed Burger Law that day. [Here is a link](#) to that review - mostly about my amazing paralegal, Casey.

I Google Review all lawyers and firms that attend our CLE's and I have reviewed well over 100 firms. Email me and I will 5 star review your firm or business.

Click the button below to Google Review on any of our 3 office locations.

St. Louis Office

Belleville Office

Chesterfield Office

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## \$100,000 Settlement -- So Far

We represent Dan and his family for a car crash in May of 2016. Another lawyer referred me the case early on - so we were able to work fast. Dan was going south on Lemay Ferry. He was in the right lane (driving for work) when another vehicle suddenly turned left in front of him causing a very violent crash.

Dan has significant neck and shoulder injuries - and a concussion. Numerous medical providers treated him. His traumatic brain injury seriously impacts him- he cannot remember things, his whole life has changed, and he has to keep memory aid notebook. He recently had shoulder surgery. Dan's small business and family was seriously impacted by this.

The Defendant's insurer only offered \$36,000 to settle on a \$100,000 a policy. We threatened the insurance company, Progressive, that if they failed to settle within the policy limits we would pursue a bad faith claim. So, we filed suit, served the Defendant. Immediately the claims adjuster called and offered the \$100,000 policy limits.

I am happy for Dan-but the case is not over. We are pursuing an underinsured motorist claim for Dan and will not rest until we get a large resolution for him and his family. The Missouri Supreme Court in [Swadley v. Shelter Mutual Insurance](#), again approved the provision that the settlement with the defendant reduces the underinsured limits. But we'll keep fighting.

In another case we have a policy limits \$50,000 offer for our client Nick. We always make the insurance company get an Affidavit from the insured that there is no more insurance in a case. We have found more insurance coverage in other cases (and more \$\$ for the client). But we became stymied when the defendant hired a separate lawyer who will not have the client sign the Affidavit.

So, we are refusing to settle the case. I just wrote the other lawyer advising him that he is jeopardizing his client's insurance coverage. We have explained that we will sign the release to fully release his client but this other lawyer just does not get it. You can lead a horse to water but you cannot make them drink.

Have a fun July 4.

We saw the fireworks on Art Hill last night - and had funnel cake. Woohoo.



# Work Comp

July 15, 2017

Good Evening James,

While some of us go on vacation or relax this time of the summer (and certainly on Sunday night), I thought I'd write about hard working people and on the job injuries. We have long represented folks in Workers' Compensation claims.

And I am excited to have finished and published **my third book**. This one on **Workers' Compensation**. You can download a copy of the book [by clicking this link](#).

The book has detailed information for lawyers and claimants on all aspects of Work Comp. Please feel free to download and use it. If I can help you, a friend or a client in a Work Comp claim, email or call me ([314-542-2222](tel:314-542-2222)). We pay co-counsel fees to referring lawyers.

There were 104,087 on the job injuries in Missouri in 2016. [Click here](#) for the 2016 Labor and Industrial Relations Annual report.

Gov. Eric Greitens signed legislation banning local governments from giving preferential treatment to union contractors on public construction projects. ([Click for article](#)). He also signed changes to the Work Comp laws. ([Click for article](#)). Workers will be paid less in Missouri.

Below I discuss his changes to Work Comp law, an update on the dogs we rescued last month, and some mistakes workers make in their injury claims.

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## Work Comp legal changes

Governor Greitens signed [SB 66](#) (about which I have previously written) that was passed by the Missouri legislature. Here are the key changes workers need to understand:

**Death Benefits for the Survivors of First Responders.** Changes Section 287.243 RSMo. These changes make some very substantial additions and alterations to this Section. If you are a survivor of a First Responder, you must file claims within one year of the death of the first responder.

**Retaliation Legal Claims.** Changes Section 287.780 RSMo. In general, if an employer retaliates against an employee for filing or attempting to file a worker's compensation claim, the worker may have a legal claim against the employer. The legal standard to win a case has now been changed. Previously, an employee merely had to show that the employee's filing of a worker's compensation claim was a *contributing factor* in the employer's decision to retaliate against or fire the employee.

The new standard requires a work comp claim to be the *motivating factor* for termination. This is defined as "*the employee's exercise of his or her rights under this chapter actually played a role in the discharge or discrimination and had a determinative influence.*" This new standard will

*make it harder for employees to prove their cases.* Jury instructions in MAI section 38 will be changed accordingly.

**Drug and Alcohol Testing.** Changes Section 287.120.6 RSMo. Now, employers are required to conduct drug and alcohol tests of employees within 24 hours of the workplace injury, and provide employees with the drug test results within 14 days of the employer having received the results.

What's more, the employee must be given the opportunity to do a second test on the original sample. If the test comes back positive for a non-prescribed controlled drug or its metabolites forces the employee to prove that the workplace injury did not occur as a result of the drug use.

**Hardship Hearings.** Changes Section 287.203 RSMo. When employers fail to provide the benefits to which an injured worker is entitled, the worker's only recourse is to file for Hardship Hearing. The forces a mediation and trial before an administrative law judge to provide benefits owed. This can be monetary benefits or medical treatment. The new law is actually positive for employees. It forces the Court to hear Hardship Hearings within 30 days of the request.

**Employee Disability Rating.** Changes Section 287.390 RSMo. This change requires the employee to obtain an expert opinion relating to their permanent disability within 12 months of the employer's offer of settlement based on their own expert rating.

**Death Benefits for Step Children.** Changes Section 287.240 RSMo. This law relates to death benefits available to the children of workers killed on the job. These changes amend the definition of dependent children to include "any stepchild claimable by the deceased on his or her federal income tax return at the time of the injury..." These changes should make it easier for step children to collect death benefits.



My wife Kristen and I learned that Sam, the male dog I rescued on our ride along with Stray Rescue, is on track to be a therapy dog! He left yesterday for the first leg of his training as a "Puppies for Parole" student. After he completes his time there he will move forward with the additional training he needs to be therapy certified.

Dogs' ability to heal is continually amazing to me, and I am so glad we found him that day. Way to go, Sam! His mate Diane was adopted out, too. Amazing.

Also - we found forever homes for the three puppies we fostered. (pic below)

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## Common Work Comp Mistakes

(Excerpted from chapter 6 of [work comp book](#))

**Not filing a written injury report.** You need to file a written injury report in order to properly notify your employer of your injury. Include the time, place and nature of the injury as well as the name and address of the person injured. Send an email confirmation of it. Fill out the paperwork at the work comp doctor's office or the urgent care or wherever you are being treated and say that it is a work-related injury.

**Deny the accident occurred.** The truth will set you free. Always communicate and be clear about how the accident occurred and how bad your symptoms are. If your employer is trying to keep it off the books and pay for your medical with cash or put it on your own health insurance, it is improper and they are going to hurt you. They are going to use this to deny that you ever had an accident in the first place.

**Not getting medical care.** Get medical care right away. Go to the emergency room, urgent care, or primary care doctor and report the injury and get the medical care that you need. You have insurance and your health is important to you. If you don't seek treatment right away, your employer and insured are going to try to say that it is because you weren't hurt.

**Accepting too little compensation for your disability at the end of the case.** You are entitled to a permanent total or temporary total disability award. Too often, injured workers take too little for this. A good lawyer will advocate strongly and make sure that the employee is being fully compensated for all the levels of disability relating to the claim.

**Not filing a claim within 2 years of the accident.** Although you have 30 days to place your employer on written notice of your work place injury, you only have 2 years from the date of the accident to file your claim for compensation. [R.S.Mo](#) § 287.430. If your employer fails to report your injury within 30 days of knowledge of the accident, then your deadline to file claim for compensation with the State extends from 2 years to 3 years.



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## Can I Google review you or your business?

Do you know my firm is the most and best Google reviewed in the area? You can help by reviewing us by clicking these buttons (thanks). Email me if I can review you or your business.

[St. Louis Office](#)

[Belleville Office](#)

[Chesterfield Office](#)

Here's a pic of Jackson and a recent foster pup. He's been foster dad to 30 + puppies and is a great dog.

Thanks for reading.

Gary Burger



# Tort Lawsuits and New Mexico

July 30, 2017

Good Morning Julie,

With Governor Greitens' tort reform measures going into effect in about a month, I looked at the impact of personal injury lawsuits on courts in Missouri and around the country. My findings may surprise you.

I also went on a summer vacation with my family to New Mexico, which has a surprising history. Further down in this email I share 10 things you probably didn't know.

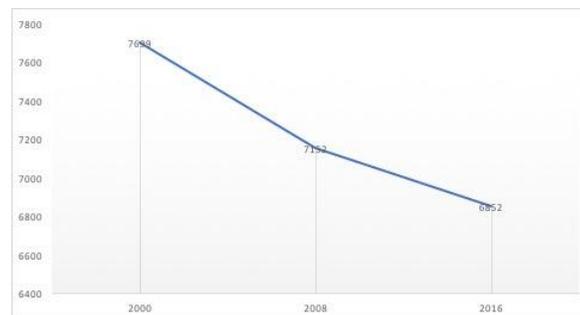
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## Lawsuits in the US

A public opinion poll taken on November 8, 2016 showed 87% of voters agreed there were “too many lawsuits filed in America.” But claims that tort lawsuits clog up Courts is fake news.

In the last 15 years tort lawsuits comprise **just 2-3% of cases filed each year** in Missouri. Many judicial circuits and counties in Missouri go all year without a trial in a personal injury case. And the number of Missouri tort lawsuits keeps going down.

**This chart depicts the decline in the number of tort cases filed in Missouri from 2000 to 2016:**

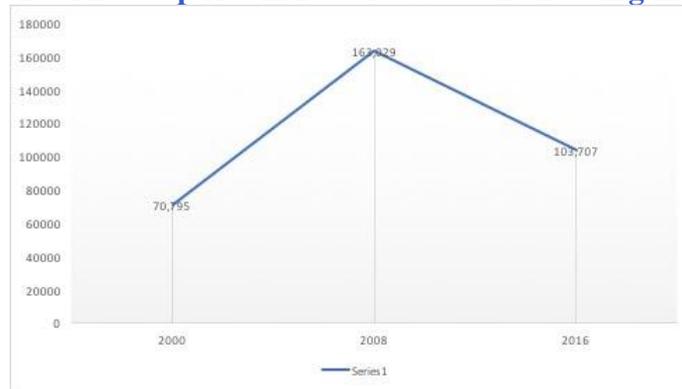


A report by the National Center for State courts stated their analysis showed tort cases declined from 16% of civil filings in state courts in 1993 to about 4% in 2015, which is a difference of more than [1.7 million cases nationwide](#).

Nationwide, fewer than 2 in 1,000 people filed tort lawsuits in 2015. Tort lawsuits now account for less than 5% of all civil filings in State courts. Contact cases where big corporations and creditors go against individuals to collect debts are about half of all civil cases. We don't hear politicians lamenting these cases.

In Missouri, breach of contract and collection cases accounted for over 40% of the cases filed on average since 2000. As you can see below, debt collection cases greatly outnumber personal injury cases. In fact, lawyers sit through long docket calls for creditor cases - not PI cases.

**This chart depicts the number of breach of contract and collections cases filed in Missouri in 2000, 2008, and 2016. The steep rise in 2008 is due to the housing market crash.**



Most civil cases are filed in State Courts versus Federal Courts. (Lately - 15 million in State Courts v. 281,608 in Federal Courts). Court cases declined from 16% of civil filings in State Courts in 1993 to about 4% in 2015- the difference of more than 1.7 million cases nationwide.

The "too many lawsuits" business and insurance lobby prompted tort reform in the late 90's and 2000's. This continues today with the tort reform led by governors including Governor Greitens in Missouri. I have written about this in the past.

More than 30 States have capped damages in medical malpractices cases and other cases since the 1970's. After tort reform passed in our neighboring state of Kansas, tort filings fell by 40% from 2000 to 2015.

Tort reform often gives insurers the ability to play hard ball when dealing with small cases and drive down the value of these cases as it is expensive to pursue these cases and try these cases. I encounter this on a regular basis.

Even though I have been doing this for 25 years and think I know what I am going, I still get adjustors on the other side low balling me on claims, forcing us to file many cases. We filed 75 lawsuits so far this year in our firm.

Most tort cases end in judgments of \$12,000 or less and only 2% of civil cases result in judgments more than \$500,000.

Read more [here](#).

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## New Mexico

We took the family to northern New Mexico for a week vacation and had an amazing time. We went on long hikes, whitewater rafting, paddle boarding, visited pueblos new and old, went horseback riding and a bunch of other activities. Here are the top unique and interesting things I learned:

1. New Mexico's history is older than the east coast. The oldest church in America is the San Miguel Chapel built between 1610 and 1626 in Santa Fe, New Mexico. Human habitation area dates back about 5,000 years and the Taos Pueblo has been continuously occupied since the year 980.



2. It is monsoon season in the New Mexico desert in the late summer. It rained many afternoons. The warm moist air hits the mountains and gets pushed up into the cold air which creates rain clouds. You always have to summit a mountain and be down before the afternoon because storms come and lightning strikes can be deadly.

3. My kids are amazing hikers and don't complain. As my kids are getting older I don't have to call hikes "walks" and we actually enjoy ourselves.



4. The history of the building of the atomic bomb is fascinating - Los Alamos has great museums. Did you know that the US went from no knowledge about atomic bombs or nuclear reactions to a bomb able to be dropped in less than 3 years?

The US conducted an amazing effort through the Manhattan project of building 3 separate cities - in Tennessee, New Mexico and Washington State - where they created huge centrifuges to distill plutonium and uranium in an amazingly short period of time. They put up one house every 30 seconds and created these walled and secure cities. While fissionable plutonium and uranium was being made in Tennessee and Washington, the scientists in New Mexico were inventing how to make it into a bomb.

This all coalesced and combined and the two bombs dropped on Hiroshima and Nagasaki which killed almost 400,000 people. The bombs were never tested before and their first use were on these sites.

5. The human toll from dropping these bombs was terrible on the Japanese. But it was also terrible on the Americans who worked on these projects. Many got cancer and died because of radiation exposure. The fallout from the test bombs exploded in New Mexico created radioactive fields that drifted across and affected the people in that area.

The transport of plutonium and uranium to those Los Alamos caused significant increased radiation at gas stations along the routes between Washington, Tennessee, and Los Alamos.

6. My wife is an amazing puzzle solver. She solved 1,998 pieces (that was 3 puzzles with 1 piece missing from two of them).



Above is a pic of our power lunch.

7. Santa Fe, New Mexico is the nation's highest state capital.

8. Santa Fe was founded 10 years before the pilgrims landed at Plymouth Rock.

9. The world's first atomic bomb exploded 200 miles north of Los Alamos, NM.
10. The New Mexico constitution officially barred "idiots" from voting. This was true until a Supreme Court ruling in September of 2016.



Here's my daughter, Lucy, bummed our hike, vacation, and summer is over.

## Responses:

"Greitens is such a putz. You are not. Nice work on this email."

-Jim

"Gary, this was a great email!

I am well aware of the forces behind the constant calls for "tort reform," since I have been friends with Dave Ransin since law school and am on the solo and small firm listserve; this topic naturally arises often. But your charts are very graphic, though you did not include any information on the effect of caps on a catastrophically harmed person with catastrophically expensive medical needs for life. I think when people see that information it sometimes changes their minds on the need for reform; the other thing which causes a change of opinion is when something happens to oneself or one's family.

Your kids are adorable. Be grateful for #3.

Your facts are interesting. But wth is the matter with the Supreme Court? A state cannot prevent idiots from voting? Sign of the times I guess (will refrain from further editorializing)."

-Janet

# Help Doug

August 28, 2017

Happy Tuesday Kathy,

It's the end of summer, kids going back to school, crazy cool August, and an eclipse not had here since 1442. Below, I share some news about a car crash settlement and a scuba diving trip I did with my brother to Cozumel, Mexico. But first, let me share a story and ask for some help.

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## HELP

If you, or anyone you know, have any info about a hit and run incident on May 18, 2017 at New Hampshire and Hegge Road in Affton, MO, please call us at [\(314\) 542-2222](tel:3145422222) or CRIMESTOPPERS at [1-866-371-8477](tel:18663718477). Or you can [click here](#).

We represent Doug Hindle in his Workers' Compensation claim. Doug is a long time road safety worker who was terribly injured in a hit and run accident while on the job. The driver of the white pickup crashed into Doug, veered towards other road workers and continued driving.

Some of Doug's coworkers tried to chase down the truck but were not successful. Others saved Doug's life. But the battle is not over and Doug fights every day to overcome his terrible injuries. (If you have any work comp questions see if my free book answers them by clicking) Please share this story - let's get this criminal. **Our Facebook post on this can be found here.**

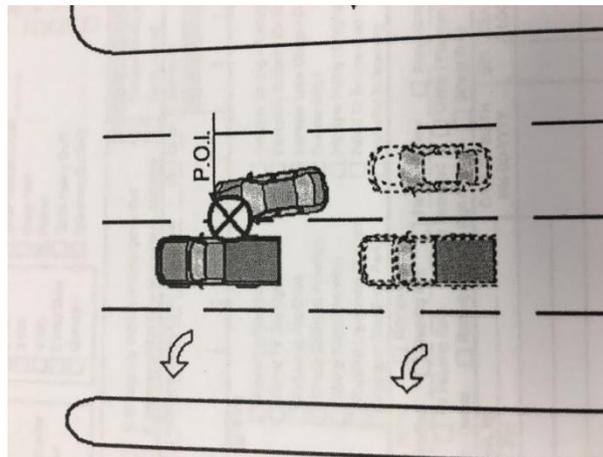
The flyer below has information on the vehicle and numbers to contact.



## \$100,000 Auto Crash Settlement and still going

We settled another auto crash last week for our client Tony Webb. Just like the one we discussed in our last email, we continue to make claims against Tony's med pay and underinsured motorist policies to make sure we fully compensate him for his injuries.

Here's the diagram of the crash:



Tony had \$26,000 in billed medical with much paid by his health insurance. We think this a great settlement. Often we have to file suit to get this type of result. But - we are also pursuing his med pay benefits and making an underinsured claim as well.

We get an affidavit from the insured that they have no other insurance before we settle the case so we make sure we can make the underinsured claim. We will keep you posted.

The challenge in the case was in persuading the insurance companies to pay for a future surgery that has not occurred yet. Spine surgery is usually optional and patients only elect to have it when their pain is intolerable.

Tony and his wife are about the hardest working, nicest people you'll ever meet. So proud to help them.

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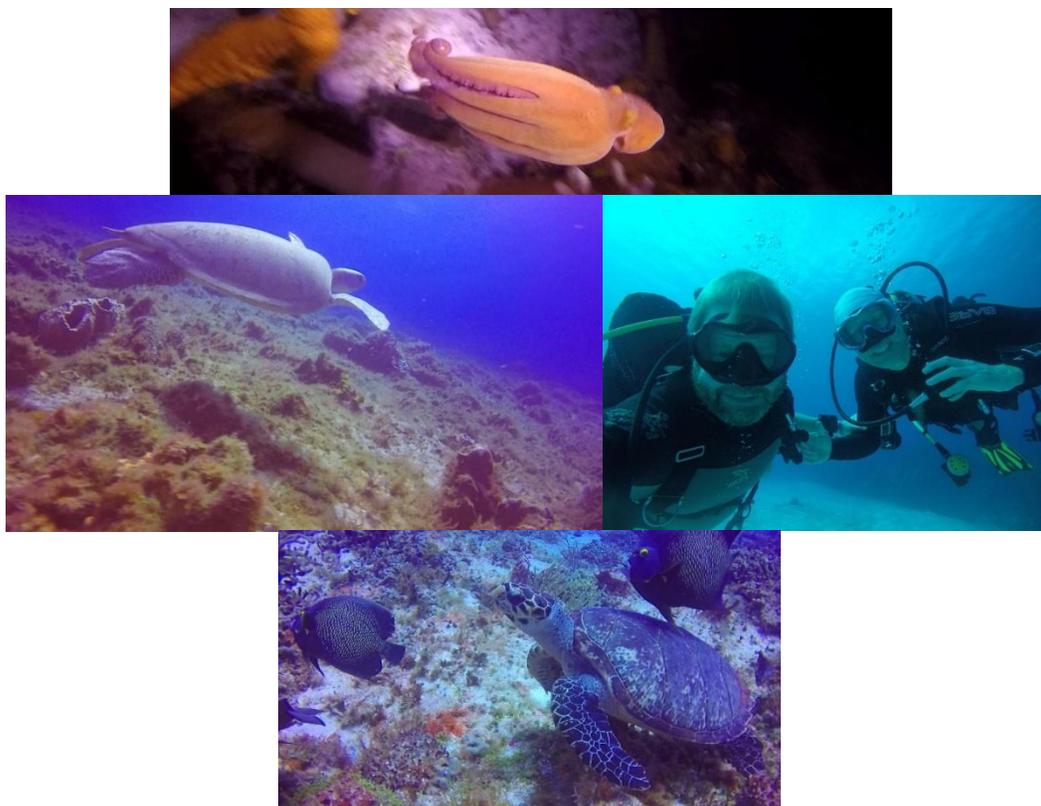
## Cozumel

My brother, Eric, and I did a scuba diving trip to Cozumel, Mexico last weekend. First dive trip we have taken together and it was a blast. Eric took two courses and got his advanced diving and nitrox certifications. 12 dives in three days were amazing.

Some dive sites in Cozumel have this incredible reef structure where pillar like reefs grow together forming crazy tunnel structures. As a trained cave diver (don't try this at home) I was able to go through these twisting tunnels through the reefs.

I would go through these and find my way out over on another part of the reef to rejoin the dive group. (Again - don't leave your dive buddy unless you're appropriately trained - or don't leave your dive buddy ever because it is unsafe, adds my wife who is editing this email). When asked by the dive master, I say the 'sea is my buddy,' to quote a friend of mine.

Gorgeous sea life. Here's a nurse shark, an eel, two turtles (second one rare blonde turtle) and an octopus on a night dive:



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## Headache

Insurance adjusters and defense lawyers try to downplay headaches from head or neck trauma. We work hard (and successfully) to let the jury empathize with headache pain and suffering. We have had numerous large settlements for headache symptoms recently - whiplash causes different types of headaches. So, I wrote a blog about it - [click here](#).

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## Safe Eclipse

There are lots of knock off Solar Eclipse glasses being sold. Make sure yours are **compliant with the ISO 12312-2 safety standards**. Stay safe.

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You can use your glasses to protect you from the glare of my brother's head, too!



### Responses:

“Thank you!!!!!!!!!!!!!!!!!!!!!! That is so nice of you to put that out there...I am so grateful. I also wanted to let you know that yesterday Doug was released by Barnes and sent to the Rehabilitation Institute of St. Louis. He will get all the rehab he needs and now is one step closer to hopefully coming home I am so thankful to Barnes for saving his life...but we have been there for 3 months and we are both ready for him to get to rehab...get strong and walk again. Thank you again for your visit, and for being so good to us and helping us try and get this person.”

-Kathy

# End of Busy Summer

August 28, 2017

Good Morning Jake,

Thanks so much for the great response to my last email about Doug Hindle and trying to find the car that crashed into him.

My family is getting into the school groove and our kids are in 2nd, 7th and 10th grades. At work, our summer was filled with depositions, resolving cases and fighting for our clients. We have had an amazingly busy end of summer.

We just settled a hotel assault case for \$675,000, have a new page on our website for sexual assault claims and have a new lawyer with us. More on this (and personal stuff) below.

---

## But first, we filed LOTS of lawsuits last week.

Effective today, laws on personal injury and employment cases are changing. The changes include: restricting plaintiff's evidence of medical expenses to only what was paid to satisfy those bills, raising the standard to prove employment discrimination and retaliation claims, and erecting road blocks to expert testimony at trial.

Here are links on [each of these words](#) to prior tort reform [blogs](#). And here's a pick of me Friday with some files and lawsuits:

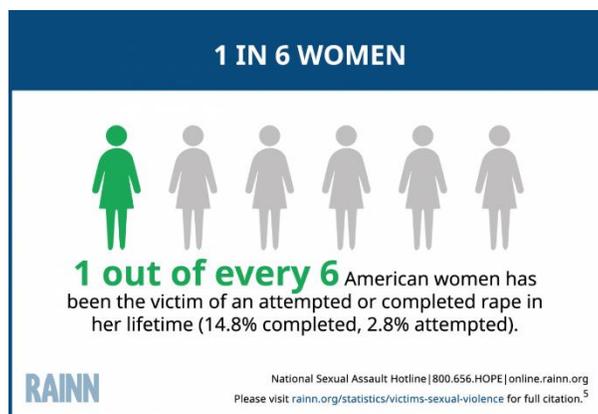


## \$675,000 Settlement

I have represented victims of assault before, but our recent settlement was a real vindication for our client and a strong message that hotels have to protect innocent people from criminal acts. We represent a woman who was sexual assaulted by the night manager of a hotel. Our client felt abandoned by our criminal justice system and mistreated by the defendants.

My client returned late at night to a hotel and was escorted into a different room by the perpetrator. After she was assaulted, she went to the hospital the next day and complained about what happened. But the police and prosecutor did not feel they would be successful in the prosecution for various reasons. But my client did not give up. She retained a few different lawyers and eventually came to me.

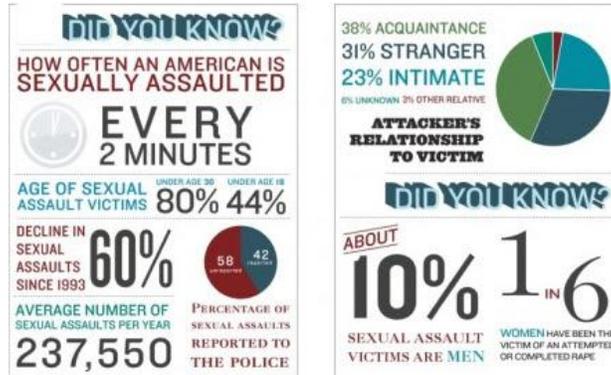
We filed suit and aggressively pursued the case. I deposed the managers who hired and retained this employee - and won the case. The hotel did not do background checks on employees and let a sexual predator attack their guest. They did a shoddy investigation and tried to cover the incident up. At mediation I did a detailed presentation with video clips of the managers proving how strong our case was. (I always video defendants' depositions).



We took the case from a nothing offer for a long time to a \$675,000 settlement. This will enable my client to have the financial security to accomplish a lot of things in life that were on hold while this case was progressing. It is gratifying to know our civil justice system worked in this case.

In addition and more importantly, my client used this incident to transform her life and better herself. She worked on herself for her and her family. She turned herself from victim to fighter.

Victims of sexual assault often feel powerless, that they have no control and experience a trauma that never goes away. I got more from my client than she got from me in this case. Working with her enabled me to sit here and understand my client's damages.




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## New Sexual Assault web page

At BurgerLaw.com we have a new webpage with information and resources for victims of sexual assault - and how to pursue a claim. You can see that by [clicking here](#).

We have clients who contact us directly about these types of claims.

We also have lawyers who refer these cases to us with whom we co-counsel. We want to make sure their clients have a great team to get the best possible result.

From our site:

"We have extensive experience in working with survivors of sexual assault in order to help them to navigate through the difficult, emotional experience. We have attorneys who are specifically trained in a victim-centered approach to litigation. We work to ensure that the legal process is not re-victimizing and that survivors are empowered throughout the process."

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## Welcome Nicole Gorovsky

I am pleased to announce that attorney Nicole Gorovsky has joined Burger Law. Niki has 16 years of fantastic legal experience as a federal and state prosecutor, assistant attorney general, and civil trial lawyer. Niki has prosecuted claims for sexual assault and many other lawsuits. She has had many successes and many trials.

I am excited to work with her to help our clients. You can visit Niki's bio page by [clicking here](#). You can email her at [nicole@burgerlaw.com](mailto:nicole@burgerlaw.com) if you have any legal questions or you can call her at our office.

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## Hamilton

Kristen and I got excited about the Hamilton musical about a year ago. We have been listening to music and reading book, Alexander Hamilton by Ron Chernow.

We were excited to go and see the show in Chicago last weekend. It was amazing. If you get a chance to do it, I highly recommend it. If you cannot get up to Chicago, it is coming to Fox. It is well worth the price.



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## Pedal the Cause

I am riding in Pedal the Cause again this year and raising money to help find a cure for cancer. This is an amazing event attracting hundreds of cyclist and raised millions of dollars. If you would like to contribute to the charity for my ride please [click here](#).

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## Art of Paws

Lastly, we went to a great Art of Paws event Saturday night. This benefits the St. Louis Effort for Aids. It helps sick people keep their dogs or provides assistance when they cannot care for their pets. For more info, [click here](#). And here's a pic:



## Responses:

“Thank you Gary!!! That was a real nice read this morning! Happy to say, things are still going well and I feel like my life can move forward! Thank you for ALL your help.”

-Carolyn

# Opioid Epidemic

September 12, 2017

Good Morning Larry,

I thought I would tell a couple stories about clients in this email.

We represent Nathan Hughes’ family for his death from **accidental opiate intoxication**. Nathan’s story is unfortunately too familiar. He was injured at work in 2013, including a herniated disk in his low back. His doctor prescribed him pain medication. His doctor increased it over time and did not give him other alternatives.

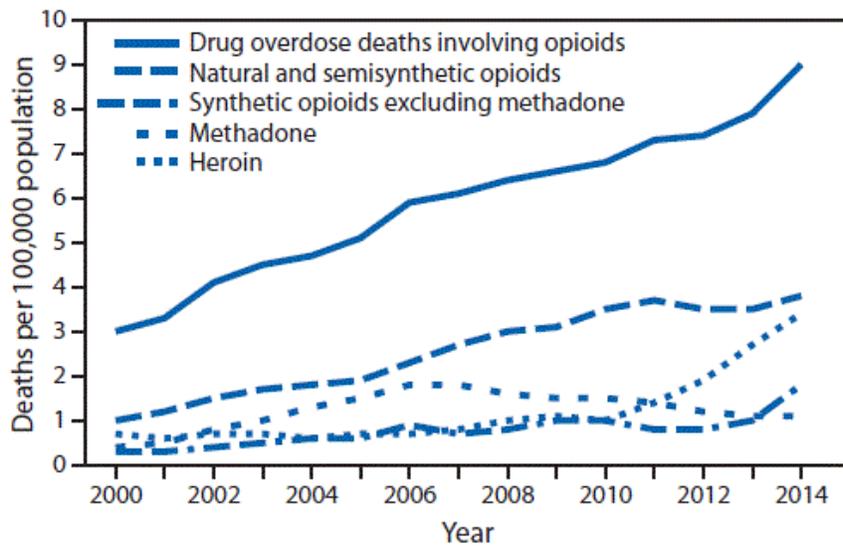
Nathan was not consulted about the addictive nature of the drugs. Instead, he was prescribed more and different drugs with higher dosages. Nathan **became addicted**. His doctor ignored that.

So, Nathan switched doctors and began outpatient rehabilitation for his opioid addiction. He tried hard and it was tough. He received counseling and a methadone prescription to ween him off the opiates. On July 9, 2016, **he died with lethal amounts of prescription drugs** in his system. It was accidental.

Burger Law recently **filed suit for Nathan’s death**. We are suing is former physician, Dr. Creighton, and numerous drug companies including: Mallinckrodt, KVK-Tech, Impax Laboratories, Actavis Generics, Amneal Pharmaceuticals, West-Ward Pharmaceuticals, and Par Pharmaceuticals. They acted together to get Nathan addicted then killed him.

We have also made **class action** allegations and hope to help other Missourians whose loved ones have been wrongfully treated by these Opioid companies and prescribers.

**To contact us about an opioid claim** go to [Burger Law's page here](#) or our site [Opioiddeathlawyer.com here](#). To contact us to review a claim, fill out the form [here](#) or call us. We co-counsel with referring lawyers in these claims, too.



A third of Americans suffer from chronic pain. Between 26.4 and 36 million people abuse opioids and **over 2 million are addicted to them**. 75% of those addicted to opioids first took opioids pursuant to a prescription.

Further, 92% of people who die due to opioid overdose had been receiving legitimate opioid prescriptions from a health care provider for chronic pain. The number of opioids prescribed in the United States has skyrocketed in the past 25 years, and the number of prescriptions for opioids (like hydrocodone and oxycodone products) have risen from an estimated 76 million in 1991 to nearly 207 million in 2013.

The U.S. consumes the most medication globally, and accounting for nearly the entirety of the world's total for hydrocodone (e.g., Vicodin) and 81 percent for oxycodone (e.g., Percocet). By 2002, death certificates listed opioid analgesic poisoning as a cause of death more commonly than heroin or cocaine.

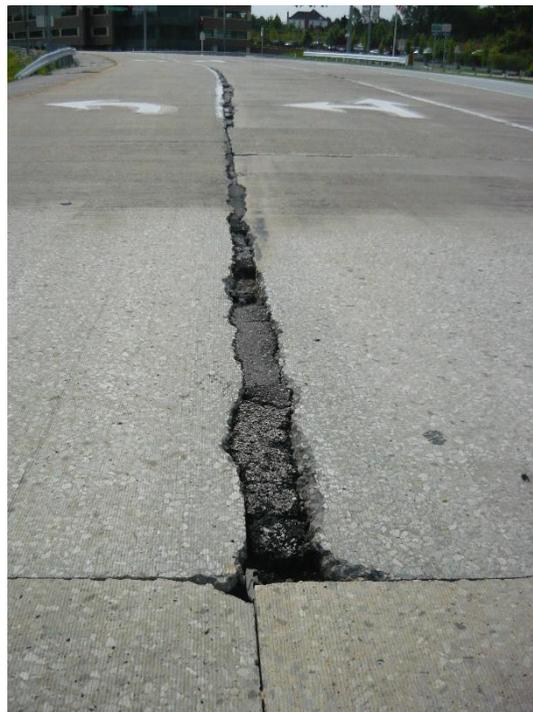


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## Rut in Road Injures *Motorcyclist*

We represented Dennis against the Missouri Highway and Transportation Department. This case goes way back to 2011 (we were referred this case by another lawyer). Our client was a medical doctor out for a Saturday motorcycle ride when he encountered a gap in the pavement between two slabs of concrete.

This caused his motorcycle to behave erratically and him to fall off the back of the motorcycle sustaining rib, neck, and head injuries. Dr. Colbert went to the hospital right away but his diagnosis was not too serious.



He then did not get further significant medical care for about 6 months. At that point, he started having arm weakness, continued neck pain, and headaches. He underwent MRI's and further testing along with rounds of physical therapy to deal with that weakness. His medical care was spaced out over years, which became a challenge.

Many defendants and juries believe that if medical is not obtained within a relatively short period of time following an incident, that medical can be unrelated to the incident at issue. This is particularly true when the initial medical does not have diagnostic tests or diagnosis of significant medical problems and if the Plaintiff is an older person in which degenerative changes are noted in the spine and other parts of the body. These could be symptom producing in and above themselves.



Regardless, the Missouri Highway Transportation Department must safely maintain their roads for all vehicles, including motorcycles. That this was an unwitnessed motorcycle crash also challenged liability. We were very pleased to settle the case for \$165,000 - his medical bills were pretty low.

We currently are helping other folks in cases against the Highway and Transportation Department. We tend to file lawsuits and litigate these cases, conduct discovery, and take depositions where we show the dangerous condition of the MODOT should use to correct those conditions (or the absent of such systems) as well as violations of State and Federal highway safety guidelines.

We file suit in court in Missouri, but in Illinois we have to file it in special Court of Claims court. In waiving its sovereign immunity, Illinois requires claims in this administrative tribunal. While Missouri lets a regular civil claim, it only waives its immunity for dangerous property conditions, motor vehicle negligence claims and insurance claims.

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## **Pedal the Cause**

I am riding in Pedal the Cause again this year and raising money to help find a cure for cancer. This is an amazing event attracting hundreds of cyclist and raised millions of dollars. If you would like to contribute to the charity for my ride please [click here](#).

---

## **Lou Fest**

Lou Fest is always a great time. Many bands, a great atmosphere. Huey Lewis and Missourian Nathaniel Rateliff and the Night Sweats rocked.



## Responses:

“I could use a hungry team. Lots of issues. I have filed a complaint against provider and facility with the state. I offer up 70% of any damages that are recovered.

-Larry

“Thank you for sharing these situations. Too often the public hears that someone died due to a drug overdose or situation. However, no one talks or explains about the medical field’s part that they played in the situation. These situations provided insight that the public should be given more often. That might help others to be aware and not become a participant of those kinds of circumstances. Thanks again.”

-Susan

# Pedal

September 26, 2017

Happy Tuesday Afternoon Karen,

On Sunday we rode in Pedal the Cause. It's an amazing charity with 100% of donated money going to fund research to cure cancer. As with anyone, I have family members who have battled this disease (and are).

I was pumped to ride the 50 mile distance and many friends contributed; I was bummed to crash 4 miles into my ride. My front wheel hit a crevice and failed. My bike and I hit hard. At the end is a pic of my leg after. (And after I discuss three slip and fall successes).

The support truck with [Big Shark](#) was great. They loaned me a new wheel, cleaned my leg and off I went. It was really swollen and bloody - but cancer survivors don't stop and neither did I. On the plus side, I had a great time, raised \$\$, got new wheels on my bike and get to see my orthopod (it's been too long).

Pedal's mission "is to provide critical funding for cancer research at Siteman Cancer Center and Siteman Kids at St. Louis Children's Hospital through our annual cycling challenge. It is our hope that research funded by Pedal the Cause will ultimately lead to a cure for cancer."

Kristen and I ride on Team Ellen, named in honor of our friends' mother Ellen Moore. Team Ellen has raised \$135,325 for cancer research since 2013. To visit the Team Ellen page at pedal the cause, [click this link](#). If you would like to contribute to the charity for my ride, please [click here](#).

Pedal the Cause raised \$2,813,965 in donations this year and had 3,074 riders. **Wow.**



## **Slip and Fall Success**

We just settled a claim for Regina at mediation for \$66,000 against Walgreens and other Defendants. Regina went to Walgreens on January 12, 2015 in Chesterfield. She slipped on black ice in the parking lot, fell and injured her knee and foot. She immediately complained to management.

The Defendants refused to pay any money to compensate her for her case so we filed suit, took depositions, and set the case for trial. Regina had not seen or slipped on the ice going into the store but only when she came out. And there were no witnesses other than her.

Regina had medical treatment and ended up having knee surgery. She also had a second knee surgery. Unfortunately, her second surgeon said that the surgery was unrelated to the fall and was degenerative condition of her knee. We were happy to resolve all liens in the case and get a large amount of money in Regina's pocket to assist her.

Regina had \$12,333.91 in paid medical and we were able to get her \$50,000 over those bills.

We have such an amazing client, so it was really rewarding after such a long fight to get her a good recovery.

The last challenge of the case was identifying the parties. When we sue a landowner, we encounter multiple parties: a corporate entity that owns the underlying land, a company that owns the store and is a franchisee for a parent company, a management company for the property and someone who is hired to do the ice and snow cleaning.

In Missouri, all store owners have a nondelegable duty to provide a safe parking lot and entry and exit to their facility. However, it is a challenge when you have to sue multiple entities for a simple claim. We have 10 current pending cases where this is the situation.

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## **Sneaky Apartment Lease**

Recently, we defeated a Motion for Judgment on the Pleadings for one of our clients. Maurice slipped and fell on ice last year at his apartment complex. A water main broke and the management did a bad job cleaning the ice up. His landlord tried to dismiss the case because it had a non-liability clause hidden in his lease.

It is important to carefully read any lease or contract for a release or "you can't sue us" clause. Although disfavored, they are often enforced. The Missouri Supreme Court found in *lock*, 923 S.W. 2d 330 (1996), that non-liability clauses must specifically state that the signer is waiving claims for negligence, and such clauses must be set apart and highly visible to the signer.

We were able to show that the exculpatory clause in our client's lease was hidden in the lease and was unfairly vague. But others who sign contracts with such clauses may not be so lucky. It is important to consult an attorney before signing important documents.

It would also be great if Missouri Courts revisited the validity of such clauses (especially in lease agreements). Residential leases are usually unfair and many contain non-liability clauses. People would not sign if they knew about them and had bargaining power.

“Allowing the use of exculpatory clauses in residential leases stems from the idea that residential leases are essentially private contracts; however, it is unrealistic to ignore the present day realities of the landlord-tenant relationship. There is rarely a negotiation in a private residential lease where bargains and concessions occur until an agreement is reached.” [Milligan v. Chesterfield Village GP, LLC](#), 239 S.W.3d 613, 616 (Mo. Ct. App. 2007).

Now we get our day in court.....

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## Hotel Stair Collapse Settlement

This week we got a great result for a client and settled his slip and fall case for \$55,000. Larcell was traveling though Arkansas and staying at a Super 8 hotel. As he was using the outside stairs, they collapsed and injured him.

When his pain persisted he got medical attention and made a claim. Larcell first hired a lawyer in Illinois who worked the case for over a year and a half and only got an \$18,000 offer. When the client fired that lawyer and hired us, we were able to push that offer to \$35,000, but we still didn't feel as though that was enough for our client.



Instead, we teamed up with an Arkansas lawyer and filed suit in the case. After filing the lawsuit, we did initial discovery and made the defendant pay our client \$55,000 to settle the case. Hiring the right lawyer made a difference.

Also, I am proud to say that because we had to hire an Arkansas lawyer and share the attorneys' fee under ethics [Rule 4-1.5\(e\)](#), **we made less money** than if we would have settled for the \$35,000. We put our client's interest first as all lawyers should.

I often say we fight hard to get full recovery for our clients and not 60 or 70% recovery. Larcell is a great guy who deserved the full recovery we obtained.



**Definitely some pedal and spoke marks on my leg.**

## Responses:

“Awesome, I hoping for the same results thanks to your help, and thanks for your charity work on the behalf of those who suffer from cancer. I hope to hear from you soon, and take care of that leg!!!”

-Cypher

“Horrible fall! I'm glad you are ok. I was there riding as well, 5 months post 6 pelvic fractures. Life is good!”

-Karen

# Greatest Uber Ride Ever

October 8, 2017

Hey Rochelle,

Last Thursday I had the Greatest Uber Ride Ever. I land in Dallas after late night work flight. I'm going to inspect a tractor trailer for a wrongful death case in Texas. (More on tractor trailer death claims and results below).

My Uber driver, Manuel, **gets flat tire on way to my hotel**. We change the tire together on the side of the surprisingly busy highway at 1 am - I get really dirty. He had never changed a tire on his car before - so we figure it out together.

We get back in car to continue the long ride - to discover **his car battery is dead**. A Samaritan stops to give us a jump. He cannot seem to turn his car around to jump us so I ask if I can. He gets out of his really old car with his crutch (he is missing a leg; no prosthetic).

We jump it and send the nice rescuer on his way. As we continue our journey, I start laughing with Manuel that it's the best ride ever. I could tell he was scared I would be mad - kept calling me sir.

We get to hotel and take this pic (even before he knows I tipped him \$100 to get him a new tire). Manuel works really hard to support his two sons. Uber and Manuel are awesome. 5 star rating for Manuel (1 star for the tire).



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## Tractor Trailer Fatalities

The prevalence and power of tractor trailers on our roads is scary. We read about tractor trailer crashes and their toll daily. Their impact is hard to measure, so I looked up some facts from the [Federal Motor Carrier Safety Administration](#), and other sources.

There were more than **12 million trucks** and buses registered in the United States in 2015 and trucks drive over **280 billion miles a year** on American roads. Over 70% of all the freight tonnage moved in the U.S. goes on trucks.

Tractor trailers can weigh up to 80,000 pounds and their force dwarfs passenger cars. They stop slower and are more difficult to control than other vehicles.

**4,050 large trucks were involved in 3,598 fatal crashes in the U.S. in 2015.** That averages to almost **10 a day**. Of these: 64% involved two vehicles; 60% were on rural roads; 25% were on highways; 35 % occurred at night; and 83% happened during the work week.

The three most common causes: speeding; distraction/inattention; and impairment (fatigue, alcohol, illness, etc.). These are similar reasons as passenger car fatalities.

We hear and assume that all truck drivers involved in fatal crashes are tested for drugs and alcohol. Incredibly from 2013 -2015 **63% were not tested for drugs or alcohol**. 5 % of those truck drivers **were under the influence** of alcohol or illegal drugs. [Click here](#) for this data and go to the alcohol and drug tables.

In 2015, there were 11.2 fatal large truck crashes per million people in the U.S. (a 6-percent increase from 2010). Of the 3,996 truck drivers involved in fatal crashes, 325 (**8 percent**) **were not wearing a safety belt** at the time of the crash.

27 percent of work zone fatal crashes and 11 percent of work zone injury crashes involved at least one large truck.

Death is obviously not the only result of these crashes - of the approximately 415,000 police-reported crashes involving large trucks in 2015, there were 3,598 (1 percent) fatal crashes and 83,000 (20 percent) injury crashes. **138,000 people were injured by trucks and buses in 2105.**

Truck drivers and companies must follow the rules set in place by the Federal Motor Carrier Safety Administration in order to prevent unsafe driving conditions for truck drivers and those around them.

Did you know truck drivers cannot drive more than 11 hours or drive after 14 hours since the beginning of a shift without taking a 10-hour break? Truck drivers are not allowed to drive after 60 hours of work during a 7-day period or 70 hours of work during an 8-day period.

But our Congress may relax these requirements - and the one below.

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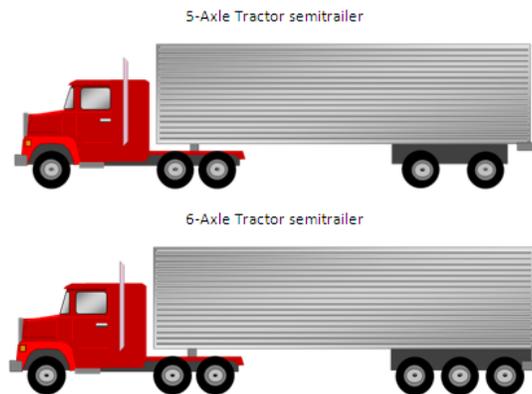
## Increase U.S. Truck Weight Limit?

Did you know that each year the trucking industry tries to pass the Safe, Flexible, and Efficient (SAFE) Trucking Act? The U.S. Congress considers it every year. [Click here for the bill.](#) It's a terrible idea that would kill more Americans on the roads.

It seeks to **increase the weight limit for tractor trailers to 91,000 pounds from the current 80,000 limit.** But already at 80,000 pounds, commercial trucks are 20 to 30 times heavier than most passenger vehicles. And an 80,000 pound truck takes 20 to 40 percent more distance to stop than a consumer car.

With greater stopping distances, more mass and force, more difficulty to handle in bad weather and more damage to our roads, we hope it never passes. Many safety groups oppose it.

Here's a pic of what trucks would look like if it passes - change from 5 to 6 axles:



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## \$5 Million Tractor Trailer Death Settlement

I represented the family of a man killed in a wreck with a tractor trailer in a wrongful death claim. In the early morning, our client was leaving a casino and went through an intersection on a green light. A tractor trailer proceeded southbound on South Broadway in St. Louis violated a red light and crashed into our client's truck.

It was a disastrous impact with both vehicles traveling in different directions. Both drivers instantly died. The tractor trailer took out some light poles and its cargo was spilt all over the road. The crash also caused a lot of property damage to the neighborhood and destroyed both vehicles.

We filed suit and proceeded with litigation on behalf of the family. We also conducted a quick and extensive investigation to identify some amazing liability evidence and to secure the evidence at the scene. We had an investigator at the location of the crash quickly. We were able

to show through the timing of the traffic lights that the tractor trailer went through the red light. We interviewed witnesses.

We also showed with skid marks that the tractor trailer was over the center line and was on the wrong side of the road at the time of the impact. Witness accounts indicated the tractor trailer was speeding.

We were able to keep the venue in the City of St. Louis, where it was originally filed. The Defendant sought to remove the case to Federal Court. However, we opened an Estate for the deceased truck driver. Did you know that you can open an estate as a creditor? We did so.

Residency is different between an individual and an Estate. A deceased individual does not have a residence, but his Estate is a residence of the State of Missouri. This destroyed diversity jurisdiction and enabled us to keep the case in State Court.

We also conducted extensive litigation and matters in 4 probate filings (as part of our fee). This involved probate filing to ensure that our client's son was his heir (he had not been declared his son prior to his death), a different suit to open the probate estate for his assets and to establish conservatorship and guardianship on behalf of the child by his grandparents.

We put together strong exhibits for our mediation to prove to the trucking company and its insurer their driver's gross negligence. We were aggressive in the mediation in this case and refused to settle. Later, when the defendant obtained additional authority from its Board of Directors, we settled the claim for \$5 Million a couple years ago.

We were able to put a very large amount of money in a trust fund and structured settlement for the young child of the deceased. We continue to maintain and work with the Court and the Conservatorship proceedings to make sure that money is secured for him.

In addition, we are proud to co-counsel with another St. Louis area lawyer who referred us this case. We are happy to get such a great result in the case and share such a robust referral fee to him for his assistance in the case. [Click here](#) to see the Missouri Lawyers Weekly article.

**Be safe from those trucks on the road!**

## Responses:

“This story should be shared a million times it's simply wonderful to hear that there are still people in the world that that can find simplicity in a rough situation!!! You are truly amazing!!!!”  
-Chris

“You certainly had an amazing Uber ride. You need to put it into a reality show. That was very generous of you in your tip. Great selfie. I always thought that Tractor trailers should have their own highways to keep them away from cars. Glad you were able to get such a wonderful settlement for the car driver's son. Keep up the good work.”  
-Rochelle

# Catcher in the Lie

October 25, 2017

Happy Monday James,

A bunch of recent cases, either pending or just resolved, have required me to catch the defendant lying to win the case. My clients say "they" can't do that, it's not right - how can you lie in a case. Here are a few of those stories and some advice on how to spot a liar.

August 21, 2016 at 2:40 am a vehicle crashed into my office building downtown. The driver and a passenger jumped out of the car and ran. We represented the building management company trying to recover the building repair cost.

The car was a rental and the renter claimed the car had been stolen. Since it was "stolen" and we could not identify the driver, the insurance company would not accept liability. However, many of the circumstances surrounding the story did not add up. She called the police 20 minutes after the crash and lived 20 minutes away.

I filed suit, litigated it for a while and deposed the Defendant. She testified she had to emergently use the bathroom in her home and left car unlocked and running on the street for 20-30 minutes in the middle of the night.

She said was preoccupied on her phone with Facebook, Snapchat and Instagram and did not "text or communicate with anyone" after the car was stolen other than the police and her husband. She filed a Motion for Summary Judgement and her lawyers told me they were going to win the case.

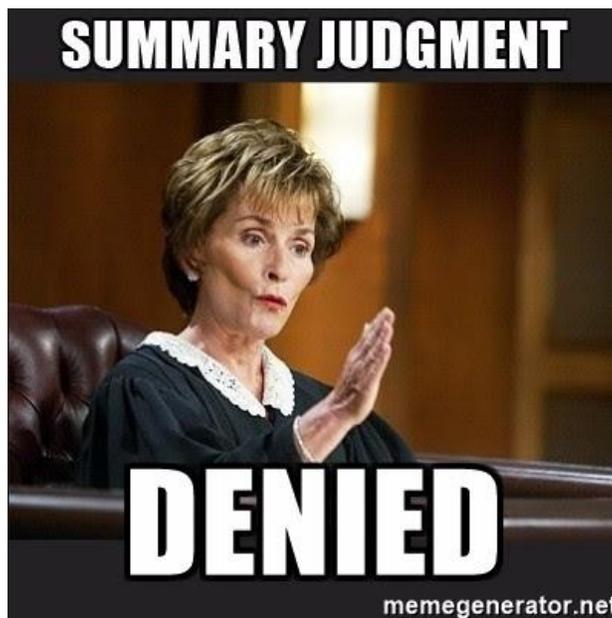
We obtained the Defendant's **cell phone records which showed she was lying**. We were able to run a skip trace on the phone numbers and identified everyone she called. Here's the record:

CALLER_NBR	DIALLER_DIGITS	MOBILE_ROLE	START_DATE	END_DATE	RATION (\$)	Call Type	NEID
[REDACTED]	[REDACTED]	Outbound	08/21/2016 01:49:12	08/21/2016 01:49:33	21	Voice	213
[REDACTED]	[REDACTED]	Routed_Call	08/21/2016 02:46:12	08/21/2016 02:47:04	52	SWAT	189
[REDACTED]	[REDACTED]	Inbound	08/21/2016 02:46:12	08/21/2016 02:47:04	52	Voice	213
[REDACTED]	[REDACTED]	Outbound	08/21/2016 02:48:00	08/21/2016 02:48:26	26	Voice	213
[REDACTED]	[REDACTED]	Outbound	08/21/2016 02:48:36	08/21/2016 02:48:48	12	Voice	213
[REDACTED]	[REDACTED]	Outbound	08/21/2016 02:49:02	08/21/2016 02:52:03	181	Voice	213
[REDACTED]	[REDACTED]	Outbound	08/21/2016 02:52:39	08/21/2016 02:52:39	0	Text Detail	193
[REDACTED]	[REDACTED]	Outbound	08/21/2016 02:54:33	08/21/2016 02:54:33	0	Text Detail	191
[REDACTED]	[REDACTED]	Outbound	08/21/2016 02:55:26	08/21/2016 02:55:59	33	Voice	213
[REDACTED]	[REDACTED]	Outbound	08/21/2016 02:57:12	08/21/2016 02:57:54	42	Voice	213
[REDACTED]	[REDACTED]	Outbound	08/21/2016 02:58:08	08/21/2016 02:58:26	18	Voice	213
[REDACTED]	[REDACTED]	Inbound	08/21/2016 03:01:41	08/21/2016 03:02:30	49	Voice	213
[REDACTED]	[REDACTED]	Routed_Call	08/21/2016 03:01:41	08/21/2016 03:02:29	48	SWAT	189
-911	-911	Outbound	08/21/2016 03:06:23	08/21/2016 03:07:51	88	Voice	213

The Defendant **was called right after the crash**. And she communicated **12 times after the crash and before calling 911**. We searched her Facebook page, and found pictures of the "friend" and his mom with whom she was talking. That friend looked exactly like the picture of the criminal we had on the security footage who crashed the car.

It was obvious her friend called and told her about the crash. Then she called and worked on her story before she called the police. She also made about 15 phone calls right after she called 911. So, it was clear she was lying in her depo and we knew her "friend" was the "thief" who took theca.

After filing all of this information in our response to Defendant's Motion for Summary Judgment, **they settled with us the very next day for the full policy limits**.



Did you know there is no civil action for perjury, so we couldn't claim that against her? And yes, we are calling the police to let them know about the false police report and the rental car company.

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## How to Spot a Liar

**Do you know how to tell if someone is lying?** We often can tell - won't look you in the eye, delay in answering, makes up a long story, etc. But we can encounter really good liars, too.

I spent 8 hours last Tuesday in Nashville, TN deposing the CEO of a company we are suing. And he was a tremendous liar. I repeatedly showed him documents contradicting his testimony. His inconsistencies within the deposition were crazy - I kept asking - didn't you say something different about this just a little while ago?

But he looked good - even when he gave multiple different explanations of his made up financial statements and documents. With people like that I have to doggedly and repeatedly show the lies. And when I do, juries get really angry - no one likes being lied to.

**If someone does any two of the following behaviors** within 10 seconds of a question and a third behavior within 30 seconds **they are probably lying** (I list 7 here but there are a ton more in the blog link below):

Do not give a 'yes' or 'no' answer to a question when they should; Smiling inappropriately; Face touching; Repeated blinking; Voice goes up; Compressing lips; Eyebrows raised; Answering the question with a question; Repeating the question; Use prefatory language like "well" and "you see"; Providing too much information and unnecessary details and a very long answer rather than just a simple answer to a question; Fein a lack of recollection.

Of course, you do have to factor in the context of the person's behavior and consider whether they do these things regularly or are just nervous.

For example, if someone has a nervous twitch, never looks at you when they are talking or moves their body a lot on a regular basis then these behaviors may not be lying indicators. And politicians never answer questions directly.

However, if a person is an otherwise calm, ordinary person and they suddenly do weird things, then **these behaviors likely indicate lying**.

Why do people (non-politicians) behave quirky when they lie? Because lying is a stressful cognitive burden - much more so than telling the truth. It's the stress of lying which produces unintended and unmonitored deviations from normal behavior.

You can **get around lies by asking basic questions with yes or no answers**. Then insist on clear answers and repeating questions until you get them. Ask direct questions with easy answers. If you do get admissions from someone, **expand on these by asking for any other similar actions before drilling down on their individual admissions**. This way you may be able to pull more information from them.

Another question technique is rather than saying 'did you take out my car when I told you that you couldn't?' ask 'is there any reason why someone would tell me that they saw you driving around in my car?' This technique forces a person to pause and decide whether or not you really know the truth.

The reality is that everyone lies- some studies suggest that **the average person lies 10 times or more per day**. So, without making judgments these are some ideas about how to detect lying and get to the truth.

The irony is that there is a deception paradox - we need to ignore the truth of what someone is saying to in order to discover the truth we are seeking. For the full blog on how to spot a liar click [here](#). To get the amazing book "Spy the Lie" by Philip Houston, et al. (which this blog is based on) click [here](#). It's an amazing book with practical advice for every day lie catching.

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## Catch a Liar by his Toe

I was able to catch a physical therapist in a lie recently. Our client was injured because the PT attempted to adjust her vertebrae during a therapy session. She had never been adjusted before and spine manipulation was not ordered by the doctor.

The defendant therapist flat out **denied manipulating her. Ever.** He testified he did not adjust her, never would have, never manipulated the lumbar spine like my client described, and didn't even speak with my client about manipulation. His assistant (who was in and out of the room) corroborated his story. The records did not reference an adjustment.

My client was really mad her medical professional denied hurting her and didn't chart the event. She was injured, obtained medical care and took a long time to recover. It was my client's word against his. But in the medical records we saw this the week after the alleged event:

Note	CPT	Mod
myofascial to bilat gluteal area DTFs to SI joint, assessment of alignment, no MET correction required	97140	
(B) SI	97035	
Discussed the pathology of the spine and the relationship of manipulation and manual therapy on the associated structures.	97530	59
	97530	59
Instructed in contract relax hamstring stretch	97110	
	97014	

During the PT's deposition, he was steadfast and doubled down on his denial. With a guy like this, you just have to show everyone, the jury, the judge (and eventually him) the lie. I wouldn't, couldn't let the medical record go - till he acknowledged the obvious.

I asked: **If you never manipulated her spine and this didn't happen - why did you talk to her about it a week later?** Why was manipulation brought up on her last PT visit? You said you didn't even discuss it, right? Why were her hamstrings tight all of a sudden? Why was her pain higher all of a sudden when she had been getting better?

He said he possibly could have discussed spine pathology with her. But he had to have a context - **nature (and liars) abhor a vacuum.** So I asked:

Q. Hypothetically, in a vacuum not relating to what she complained to you?

A. No, not hypothetically, this was a direct response to her pain and maybe a question that she asked.

Q. And her allegation of manipulation, right?

A. **Possibly, yeah.**

**Boom** - he admitted as much as he was able to. He was confronted with his lie that he never talked to her about manipulation (and couldn't explain the increased pain he had documented). Then:

Q. Did she tell you she was having pain because you had adjusted her forcefully on 4/28?

A. According to the records no, but **she did mention manipulation** and that's why we spoke about it.

Spotting the lies in the story made all the difference. But the depo was longer than shown here - it took a while to get the good stuff.

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## Lying Stats

My Dad (Dr. Gary Burger Sr.) is a statistics professor. His favorite Stats quote contained in Mark Twain's autobiography (who attributes it to Disraeli) is:

**"There are three kinds of lies: lies, damned lies and statistics."**

Carved our pumpkins yesterday. Happy Halloween



## Response

“Very good article. I have a case now where my client worked for a defendant for 6 years. We have pictures of my client working at the restaurant and wearing a hat that has the name of the restaurant on it. The defendant claims he doesn't know my client and never saw him before! I showed him the pictures and he kept saying that he can't recognize the place. He refused to look my client in the eye. I am going to nail this guy...”  
-Michael

# Stink Bugs

November 5, 2017

Happy Sunday Funday Dave,

Do you have stink bug problems like I do? They are all over inside my house. I had a pesticide company come out and spray. After the spraying was done, the guy told me that it wouldn't do anything for stink bugs because they come through the chimney.

After I tell you how I solved the problem, I discuss stories of some great clients for whom we got great results in a tanker truck vs tractor trailer crash, a Federal Tort Claims Act against the post office, and a Workers Compensation shoulder recovery.



I have seen posts and have had friends discuss stink bugs. They get in the house and seem to show up everywhere.

Last weekend was time to solve the problem. I went to Home Depot and got aluminum screen and zip ties. Then I went up on my roof and put the screen over and around all the vents coming from my chimney. I cut the screen in strips, wrapped it around, punched holes and zip tied them.

Low and behold while I was up there a stinkbug was trying to get into my house. They come from the trees and are attracted to the heat coming out of the chimney.

I was excited to do this myself for a couple of reasons: I saved a bunch of money by not having to pay someone to get up there and do this dangerous work; I got to feel really handy; and I gave my wife an anxiety attack.

(It is less relaxing doing roof work when your wife is watching you the whole time).





Here's a close up of the stink bug. I found out it is more likely to invade homes in the fall.

It survives the winter as an adult by entering houses and structures when autumn evenings become colder, often in the thousands. [In one home more than 26,000 stinkbugs were found overwintering.](#)

They will enter under siding, into soffits, around window and door frames, chimneys, or any space which has openings big enough to fit through. Once inside the house, they go into a state of hibernation. I hope this works.

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## **\$290,000 in Tanker v. Tractor trailer crash**

In the afternoon of January 28, 2013, John Birkner was driving his regular tractor trailer route. John has been driving tractor trailers for 30 plus years with a great record. As he approached a curve in Gasconade County, Missouri, a tanker trailer came around the curve too fast the opposite direction. **The tanker on the back of the truck turned over in the middle of the curve, into John's lane and came straight at him.**

John had no time to react; there was nothing he could do. **His tractor slammed right into the tanker and stopped. This made it to the front page of the local newspaper:** John was taken via ambulance from the scene (depicted in the picture on the front page of the paper below).



A good lawyer and friend of mine in Illinois, [Mike Korein](#) of [Glass & Korein](#) did a great job for John in his Workers Compensation claim. After the bruises and incident pain subsided, John's lingering injury was to his knee. John had knee replacement surgery as a result of this crash.

Mike got a great recover in the Illinois work comp in that case and then asked me to assist in the civil case. So, we filed suit and litigated the case.

We took the deposition of the Defendant. We scored a lot of points - the driver admitted a pretty significant speeding and criminal history and being on his cell phone at the time of the incident. Of course he denied going too fast.



He was traveling first in a line of three tanker trucks going into the turn (with his boss behind him). He was very familiar with the turn. The only way the tipping of the load could have happened was if he took the curve too quickly.

Frankly, the main challenge in the case was that John had prior knee injuries and prior knee surgery. Doctors usually say knee replacement surgeries are not done for acute injuries like John had, but because of degenerative changes which happen over time.

John had a long work history of pretty heavy duty labor and significant degenerative changes in his knee. The risk in his case is a jury thinking the knee replacement was not caused by the crash. However, doctors often testify that the incident at issue contributed to cause the need for knee replacement or was the straw that broke

the camel's back (or knee).

Regardless, we were able to get a great result for our client. We also used Missouri Statute 287.150 to reduce his worker's compensation lien to put as much in John's pocket as possible. Interestingly, we did not have much of a wage loss claim in this case. This is because **John is such an incredible hard worker**. He stopped driving tractor trailers and went to a job making a little bit less per hour. But he works more hours to maintain his level of income for him and his family.

Representing John and helping him get a great recovery is really the reason why I do this work. It is incredibly satisfying to get a good and full recovery for such a kind, hardworking and salt of the earth man.

## FTCA Suit Settles after initial discovery completed

Back in 2015 our client Sabrina injured her neck and back when she was rear ended on a highway ramp. The defendant was a United States Postal Worker transporting mail. But this wasn't a small mail delivery vehicle - it turned out to be a Mack tractor-trailer which rammed her from behind.

It's tough to sue the United States when you are injured. This is because the U.S. has sovereign immunity - which shields the nation from lawsuits. However, in 1946 Congress enacted what is called the [Federal Tort Claims Act \(FTCA\) 28 U.S.C. § 1346\(b\)](#). The act allows injured parties to sometimes sue the U.S. It waives sovereign immunity in particular situations.

There are some caveats - one of them is that you are **not entitled to a jury trial and the case must be tried by a judge**. These cases must also be held in Federal District Courts as they have exclusive jurisdiction over these cases.

In Sabrina's case we attempted to negotiate with the National Tort Center. The top offer issued by the representative was \$30,000. Because our client had missed a great deal of work and had significant neck problems, we decided filed a lawsuit under the FTCA. Sabrina had a soft tissue injury and continued problems.

After working hard on the case for a year we were able to negotiate a settlement with the Assistant District Attorney for \$75,000. We will be able to reduce her liens and get her a significant recovery.

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## Work Comp Settlement for Electrician

Keith M. is an electrician who was injured on the job when he fell from a ladder. The fall caused him to tear his rotator cuff. He had already had a prior tear and surgery to this same shoulder (which he had injured about ten years ago). He was out of work for the surgery and then placed on light duty during his recovery.

While his employer thought the world of Keith, their **worker's comp insurance provider was consistently 2-3 weeks late in paying Keith's temporary wage benefits**, and even shorted him several hundred dollars on some of his payments.

These payments (Temporary Total Disability for time he could not work, and Temporary Partial Disability, for time when he could only work light duty at a lower wage) were statutorily guaranteed to Keith. **We filed a Hardship Motion with the court and went to several hearings about it.**

We fought hard for Keith and forced the insurance company to start express mailing their checks to Keith. We ultimately got Keith a great settlement for his shoulder injury, and we forced the insurer to kick in extra money for Keith's frustration in the delayed temporary wage payments.

We're very happy for Keith. **Sometimes even though you have a great relationship with your employer, their insurance company will be delinquent on paying you what you're owed.** The payment delay was difficult for Keith - Justice delayed is Justice denied. We fight hard for every client and take pride in getting clients great settlements.



Hopefully this will keep them out.

## Response

“Great advice Gary. Thanks for the entertaining e-mails.”  
-David

## Justice for All

November 19, 2017

Hey Tom,

I thought I would share a great story and article about my mom meting out justice and three wild stories about my firm helping folks in hit and run car crashes (in which they all got the driver's license plate). Have a great Thanksgiving week.

I am (again) proud of my mom, Joan Burger. Last week she was [featured in an article in the New Yorker](#) magazine. As many of you know, she was a Circuit Court Judge in the City of St. Louis for many years before she joined our [firm](#). In that role, and throughout her life, she personifies Justice for All.

The article highlights a case where a prosecutor tried three people for the acts of two. She presided over a trial where the 3rd Defendant was found guilty of the same crime. After he was found guilty she reviewed post-conviction motions.

She then learned, for the first time, that two other Defendants had been found guilty for the same crime. At the hearing on the motion: “She was angry. You could tell that,” Allen said.

The prosecutor tried to keep his conviction arguing "the state “did not use inherently factually contradictory theories.” It had accused the three defendants of “acting with each other.” Burger was unmoved. Two months after the hearing, she threw out Bankhead’s conviction, writing, “The state has convicted three people for the acts of two.””

As noted by the article, there are numerous instances where prosecutors try multiple people for one crime, which challenges our notions of justice and fair play. My mom had been a prosecutor for years, too. She described her duty as such in the article: "As a prosecutor, she said, “you have a duty to justice, for both the victim and the defendant, and we took that to heart.””

While my mom and everybody I know are true believers in law and order and putting criminals in jail, this has to be balanced with the right to be accused in America. As a judge, my mom balanced those interests perfectly. Here is a link to the article:

[Two Murder Convictions for One Fatal Shot](#)

Over the years, people have asked why I'm a lawyer and do what I do. It comes from my parents, and my mom as a lawyer and judge. It is important that the powerless are protected in our legal system.

Too many times, whether through fighting big corporations, insurance companies or the government in criminal prosecutions, individual’s rights are trampled. I learned this from my mom (even if I didn’t realize it at the time).

So this is a big thank you to my mom for teaching me great values, and how to be a good lawyer and a good person.



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## Hit and Run Justice

Our client Danielle was rear ended in a hit and run accident during a rain storm. An SUV hit her car when she stopped at a stop sign and sped off. Fortunately, Danielle had the presence of mind to get the license plate for the truck before going to Urgent Care for her neck, back and shoulder pain.

We filed an [uninsured case](#) with Danielle’s insurance, but continued to look for the owner of the vehicle that hit her. We searched for the license plates of the truck, and found out it was

registered to a construction equipment retailer in Texas. We sent letters, emails, and made phone calls to them and their insurance company.

We learned **the license plates were stolen** and had been reported. The accident was not the company's fault. We proved this to Danielle's insurance company, confirming that the case was indeed an uninsured claim. In [uninsured claims](#), the insurance company has a right to investigate to ensure the driver who hit their insured doesn't have coverage.

While we were investigating the claim and fighting the insurance company, Danielle continued to get treatment for her injuries. After going to Urgent Care, she saw her primary care doctor, who recommended chiropractic care. She also missed significant amounts of work, and had to use her personal days to go to treatment.

After hard negotiation with her insurance company and lien holders, I settled the case and Danielle wound up with \$8,500 in her pocket (and no taxes).



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## Chasing Justice

On March 8, 2016, Joe and his girlfriend were traveling north on Highway 55 in the City when another driver came into their lane and hit the front side of their car. They were hit hard but followed the other car as it exited on Broadway to exchange insurance information.

But after they exited, the other driver took off at a high rate of speed going the wrong way on South Broadway. They tried to follow but lost the other car. They called the police and got assistance. They were both injured in the incident. They did get the license plate of the vehicle, it was a Nissan Altima license plate ML9-R3K owned by Munira Sarac.

This was hit and run, but the police and the client found the hit and run driver. So, we could not make an uninsured motorist claim for a phantom driver. (The City would not prosecute).

We sued the owner of the vehicle. And it got trickier. The Defendant told us (through discovery) that it was their daughter's car and mom was not driving it. We amended the claim and sued the daughter Sejla Sarac. We said that Defendant negligently entrusted the vehicle to his daughter.

But the defendants are making it thrice tricky - Sejla has answered discovery and says she was not driving it either - an unknown friend was. (Ha) So we still do not know who was driving the car (allegedly).

We are limited to pursuing direct and negligent entrustment cases against these folks. I am really looking forward to these depositions. I will use some of my How to Catch a Liar tricks I shared a couple emails ago. ([See blog here](#)).

This is an interesting example of how you keep going to track down who the liable party is in a case like this. It would be a lot simpler if they would just admit they were driving the car and then maybe we could settle this case. We will keep fighting for Joe.

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## Still Fighting for Justice

We represent Vivian in an April 2016 car crash. Vivian was westbound on Martin Luther King in the City when she was rear ended. The vehicle who rear ended her took off. She described the vehicle to the police officers as a tan Ford Taurus with license plate V545269. The police conducted an inquiry and found the vehicle. They entered a ticket and warrant for leaving the scene of an accident.

Vivian was injured in the accident and obtained medical treatment. We made an underinsured motorist coverage claim. The Defendant would not offer any money, so we filed a lawsuit.

The Defendant took the deposition of the driver who apparently owned the vehicle after running the plate number. It was a less than fruitful deposition as the suspected driver didn't have much to offer. He testified he may have owned the license plates in the past, he wasn't sure, and that he had sold some vehicles.

We were really not able to find out an insured driver who was occupying or driving the car at the time. This has really stymied both Vivian's insurance company on the uninsured motorist claim as well as us.

Regardless, Vivian's insurance company should take care of this case. We have been litigating this case for a long time and cannot get them to pay enough. We will keep fighting for Vivian and try the case if necessary.



Getting my Griswold on.

## Response

“I read that article about your Mom. She was/is a wonderful person who cares about Justice.”

-Eric

## In the News

December 4, 2017

Kathy,

I thought I would share some stories that have been in the news recently and updates on some past stories.

I was recently interviewed by Katie Baker of [Buzzfeed](#) magazine for a story on Massage Envy. We represented a client in a **case against Massage Envy for sexual assault**. Our client went to Massage Envy for a massage, and fell asleep. She woke up to the masseuse sexually assaulting her.

She told the assistant manager, but Massage Envy never spoke with her about the incident. Our client then contacted the police and filed a police report. Only then did Massage Envy react - but they did not acknowledge what their employee had done to our client or seem to really care.

We were surprised - so we filed suit against the masseuse, the franchisee and chain as a whole. After significant litigation and fighting the other side, we resolved the case to our client's satisfaction.

I and our client were interviewed for the article, which came out last week. Over 180 women have reported sexual assaults at Massage Envy. [Here's the article](#). Not nearly as many have pursued legal claims. I explained to the reporter that it's hard to do so.

It can be hard to stand up and assert claims. Prosecutors are usually overwhelmed and have limited resources. Civil cases face aggressive defenses and not as many lawyers pursue these

claims or know how to do it. Assault victims are shocked and reeling from the event and often do not know what they should do.

**I was so happy my client stood up to the company, sued them and got a good result. Very proud she also called and talked to the reporter to provide important information for the story.** Women need to know about companies like Massage Envy that do not make sure their masseuses are good people or protect their customers.



National massage chains have expanded without proper rules to protect their guest from sexual predators. They know their customers entrust themselves to Massage Envy employees intimately. Massage chains promise their masseuses will treat customers with a high degree of care, respect and safety.

They even make people fill out medical history questionnaires requesting personal info like they are a medical patient.

**In our suit, we earned that Massage Envy did nothing to vet their employees, do background checks or ensure their guests are in safe hands. They do not investigate charges of misconduct like they should. Looks like this has not changed.**

Their continued dereliction of duty is shown in these assaults on many women. Here's some [press the issue](#) has received and another link to the article is [here](#).

These places also do not make sure their franchisees pass muster. The St. Louis Massage Luxe owner Todd Beckman is a kidnapper and drug dealer. What a nut. He pled guilty last week to these charges. Check out the first reporting on this [here](#). His recent plea deal [is reported here](#).

**If you have any questions about a claim against Massage Envy or for sexual assault, please contact us.**

## Bonne Terre Mine in the News

[Bonne Terre Mine](#) was just named in the **top 50 state bucket list destinations by USA Today**. The article listed one destination in each state that is a must see on everyone's buckets list. Check out the article [here](#). It was voted the best in the nation.

And today the Mine is featured on the Travel Channel for a series called [Top Secret Swimming Holes](#). Here's an [article in the Post about it](#).

While you can see the mine on a walking tour or on a boat tour, the best views are seen underwater.

**I work as a dive master at the Mine** and have for 6 years or so. Out of the many places I have had the privilege of diving in, Bonne Terre Mine continues to amaze me. **If I can ever take you scuba diving there - email me. I'll be leading dives this weekend.**

Here's a link to you tube videos of the mine: [Here](#), [here](#) and [History Chanel story here](#).

And here's Red Bull [wake boarding in the Mine](#) (crazy).

Here's a pic of me leading a dive in the mine:





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## Stink Bug Safety Update

My dive buddy at the Mine and friend Todd is an Edwardsville firefighter and texted me the following after my stinkbug article a couple weeks ago:

Hey dude! Just saw your newsletter regarding the stink bug resolution!

Just a little heads up..... Keep a close eye, and I mean a CLOSE eye on 2 things....

1. The ventilation ability of the screen due to the extremely reduced size of the vent holes compared to the original grate type covering already installed. This could create a draft reduction & allow smoke to back up in the house. AND.....
2. (And most importantly) Monitor soot build up in the screen material. This could also contribute to ventilation reduction, excessive heat retained in the chimney leading to cracked mortar joints & fire extension to the truss space & the potential for ignitable carbon build up increasing the chance of a chimney fire at the rooftop.

As long as you're getting good draft & burning good hardwoods, you most likely won't have any problems, just keep a good eye on it. Good luck with the bugs, that have been a pain in the A\*\* this year! Hope to see you soon brother!

As I told Todd - we burn gas and not hard wood - so will not be as much of a problem for us. But we will be careful.

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## Opioid Crisis Update

Last week in the Federal Court for the Eastern District of Missouri we had a Multi District Litigation hearing to determine whether all opioid litigation should be consolidated in one proceeding.

There are currently 160 cases pending in the US against opioid manufacturers, distributors, and prescribers.

Burger Law has cases pending that this decision could affect. [Go to our site](#) for information and answers to questions. If they are not answered, [email me](#).

**Last week for the first time in Missouri there were more deaths from opioid overdoses than there were deaths from car accidents.** KWMU 90.7 talked about the crisis happening today with opioids, read the story [here](#).

The [FDA has approved an injectable opioid](#) to try to curb this crisis.

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## Great Result for Client Attacked with a Pizza Cutter at Work

We had the pleasure of representing Angela M., a cook at a downtown St. Louis truck stop. Angela was cooking in the kitchen when she was suddenly attacked by a crazy employee wielding a pizza cutter! Angela was forced to defend herself, but not before she was thrown backwards and endured a painful fall to the floor.

Angela suffered cuts to her hands, a hernia to her abdomen, and severe injuries to her ankle, which required surgery. Angela also received surgery to repair her hernia. After her surgeries and physical therapy, Angela has recovered and is back to work.

Burger Law fought hard for Angela every step of the way. We forced her employer to provide her with all of her surgical treatment and physical therapy.

We just settled the rest of Angela's claim for an additional \$37,500 in Worker's Compensation PPD payments. We also supported the prosecution of the attacker – who went to jail.



# Happy Holidays

December 17, 2017

Robert,

Happy Holidays. Merry Christmas to those who celebrate it and Happy Hanukkah to our Jewish friends and Roy Moore's lawyer.

It's a great time to celebrate the past year, reflect on what you're grateful for and plan for 2018.

I thought I would share some good news, some bad news, and end with more good news. But first, the obligatory Santa picture taken last night.



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## \$350,000 Golf Cart Settlement

This week we settled a case set for trial in January for our client Jake who was injured in a golf cart incident. 10 interesting things about the case:

1. His brother did it. They were golfing in Illinois, his brother was not paying attention (on his phone) and ran his golf cart into Jake. The impact fractured his tibia and fibula. It can be a challenge for family members to sue each other (jurors think it strange). Why would one brother sue another for money? Why would a kid sue a parent or vice versa?

In reality, we often hang out with family and friends so it is not uncommon for us to have claims against them when they do something irresponsible and unnecessarily cause injury. Driving or encountering dangerous conditions on property happens every day with folks you know well. We know how to handle these situations and in jury selection (but I don't want to share all my tricks here).

2. In the surgery placing the steel rod down his fibula the doctor left stitches under Jake's skin. This irritated him, caused pain and challenged sleep. Two different doctors on two different occasions did exploratory surgeries to remove the stitches.

3. The Defendant's doctor was really good for us. Defendants can send Plaintiffs to an Independent Medical Exams to minimize the injuries sustained, say injuries or symptoms are not related to the incident or say there was no injury at all. In the case, Defendant's doctor was great for us, linked the injuries to the crash and said they were really bad.

4. In a very strange twist, Jake liked the IME doctor so much he asked him to do a surgery for him and the Defendant IME doctor agreed. The defense doctor went in and took a bolt out that was holding the rod in Jake's leg and was causing discomfort. He also did exploratory surgery and took out retained stitches.



5. The insurance adjuster advised that he would only pay about \$100,000 to settle the case in the beginning, refused to pay anymore and got mad when I filed suit. However, through litigation, pushing the case, setting the case for trial, and taking depositions we were able to get a great settlement for our client.

6. After we settled the case for \$350,000 in exchange for a Release, the insurance adjuster tried to claim a \$5,000 credit for an advance paid long ago. But, the settlement was for new money and they were trying to change the deal. We are returning the signed Release and will insist on full payment. We will file a Motion to Enforce Settlement if necessary.

7. I kept the stitches and the bolt from the last surgery for exhibits at trial. It is good to have exhibits and tangible things a jury can look at.

8. Here is a picture of the bolt before it was taken out by Defendant's doctor. We would show this to the jury at trial:



9. In a true small world tale, when this accident happened 2 years ago Jake was attending his niece's wedding. He went to SLUH, got the metal rod put into his leg and then he went to the wedding the next day. Then, two years later, the niece worked for the Defendant's IME doctor and that was how Jake got connected to that doctor for the surgery.

10. Alcohol was involved in an unusually funny way. The ambulance record says Jake was drinking a beer when they arrived. Plaintiff and defendant testified Jake had not drank anything that day whatsoever before the accident.

However, after his brother ran into him with a golf cart and shattered his leg, Jake sat there holding his bleeding leg and asked the Defendant to give him a beer while he waited for the ambulance. Defendant obliged.

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## Federal Judge Nominations

Time for the bad news. Trump's nominees for Federal District Court judges were questioned about an array of things including: the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and even what the Motion in Limine is -- nothing too surprising.

What was surprising were the bad answers they gave to Senator Kennedy's questions. One attorney who has **never taken a deposition on his own also stated the last time he read the Federal Rules of Evidence was in Law School.**

That same young man could not give a definition of what a Motion in Limine stating his background was not in litigation and therefore he was not up to speed on these definitions.

He has been nominated to be a Federal District Judge, without ever having even tried a case and had absolutely no knowledge about Federal or State trials, trial law, or had experience in courtroom practice. Why on earth would he want to be a trial judge?

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## Civil Justice for Crime Victims

*How do We Keep Ourselves on the Cutting Edge of Important Issues at Burger Law?*

We care deeply about our clients and their cases. We feel strongly about keeping ourselves up to date on the law, on research about the issues our clients face, and trial strategy to win cases for our clients. To keep our skills honed, we take time to learn, to listen, and to be educated by others in our field all over the world.

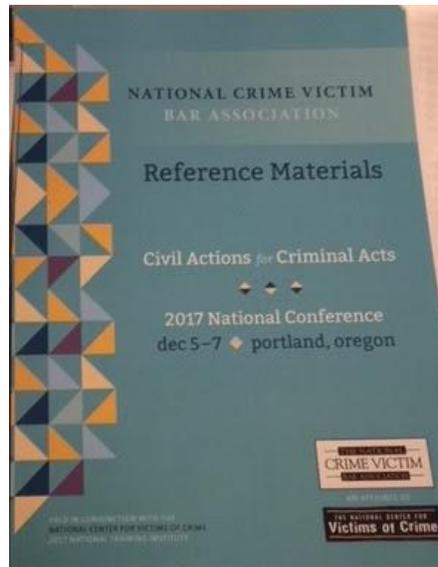
Last week, Nicole Gorovsky, an attorney in our office, went to a conference in Portland, Oregon, called "Civil Justice for Crime Victims." The National Crime Victim Bar Association organized the conference. It is dedicated to helping crime victims, including victims of violent crimes, sexual crimes, crimes against children, and financial crimes.

As civil lawyers, we try to get justice beyond what the criminal system is capable of providing.

Nicole went to presentations about lawsuits against celebrity defendants, proving the long-term impact of child abuse to a jury, dealing with consent defenses, suing universities for allowing sexual assault on campus, creative strategies in alternative dispute resolution, and much more.

At Burger Law we also work hard to become the educators in our field. At the conference, due to her input at workshops and background in serving crime victims, Nicole will be on the Advisory Board of the organization so that she can help educate others on these issues in the future.

Going to these conferences and joining these organizations is just one way that we work to keep up with the best strategies to help our clients. We strive to provide the best service possible!



## Responses:

“Nice outfit. If you ever decide to stop being a lawyer, you already have the wardrobe to be a pimp:). Happy Holidays.”

-Robert

“Enjoyed your newsletters! My best to you and your family for the Holidays! (Nice suit!) You are a brave man!”

-Ric

# Happy New Year

## January 2, 2018

Happy New Year Amy,

To begin, I wish you all the best in 2018 and hope you and your family have a safe and healthy year.

Below, I share some laws that went into effect yesterday, thank the great lawyers and staff who work with me and discuss a work comp/auto case we recently settled.



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### **But first, here's my ten "by the numbers" 2017 review.**

1. 3 Offices now - St. Louis, Belleville and Chesterfield
2. 4 lawyers now work at our firm and three paralegals
3. 5 Star review average on Google
4. 25 puppies my wife Kristen and I fostered in 2017
5. 25 -- The number of years I have been practicing law, which is also the age of my law clerk
6. 112 cases resolved in 2017
7. 117 lawsuits filed in 2017
8. 153 depositions taken by Burger Law Lawyers in 2017
9. **173 Google reviews for our main downtown office**
10. 322 open cases right now

## Cyberstalking, Circuses, and Custody of Pets – New Laws for Illinois and Tennessee in 2018.

Illinois passed more than 200 bills in 2017 that took effect yesterday.

This includes combating the **opioid epidemic**. Senate Bill 772 requires doctors to check the Prescription Monitoring Program database to see if a patient has been prescribed a controlled substance by another doctor before writing that patient a prescription.

This makes it harder to “doctor shop” drugs from multiple physicians. Check out our [Opioid claim website](#) or a recent [Burger Law blog](#) for help or info.

Health laws are changing: psychiatrists don't have to be in the same room as a patient and physicians can do virtual medical care. Here's the [NPR story I heard this morning](#) on this very topic. Although virtual therapy visits for the opioid addict [are slow to catch on](#).

Also, Senate Bill 314 requires insurance companies cover breast MRIs if a mammogram detects dense breast tissue, which is a risk factor for cancer, according to the American Cancer Society.

Other new laws treat pets as children in divorce cases, ban circus elephants, and make cyberstalking a potential hate crime. Check out the [full article](#) to see 40 of the 200 laws that took effect Jan. 1 2018 in Illinois.

Tennessee is making changes, too. Using a hand phone while driving in a school zone is a Class C misdemeanor. Check out an [article](#) we wrote recently on the dangers of cell phone and other distraction use while driving and its contribution to accidents.

For more check out the article on Tennessee laws [here](#).

Finally, the biggest law many know about taking affect January 1 is a federal law -- the changes to the federal tax system. Check out this [discussion](#) with NPR's senior business editor on what changes to expect in the coming year.

If you are a small business owner, make sure to check in with your accountant on what might change for you. If you are an individual, read up on the changes, there is another article [here](#).

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## Burger Law Year in Review

Thanks to our clients and friends for all of your support this last year. We have grown as a firm - now with 3 attorneys (in addition to me), 3 support staff, and one really great law student who helps research my crazy ideas every 2 weeks for this newsletter (and apparently writes some, too).

I wanted to **thank John Burns** who worked really hard for our clients in 2017. John grew up in Northern St. Louis County, and graduated from CBC High School. He received his J.D. from Saint Louis University School of Law, receiving distinction for civil rights studies.

John was a grade school teacher before attending law school. In fact, John met his wife when he **volunteered to teach on an Indian reservation for a year** where she was also a teacher.

John zealously advocates for injured clients and holds negligent defendants accountable for the harm they inflict. John has **extensive litigation experience** in many varied areas and has appeared in many trial and appellate courts. He handles our many workers compensation cases in addition to other complex cases.

He gives great support to me - like I literally just asked him to do a legal brief for me for a hearing tomorrow. Check out John's bio on [Burgerlaw.com](http://Burgerlaw.com) for more info.

I am lucky to have such a great lawyer and good family man on our team.



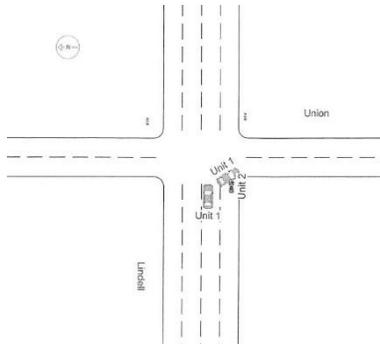
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## Settled Auto/Work Comp Case

We recently settled an auto claim for one of our clients. Darius had two claims arising from his accident. We settled his workers comp claim earlier but his auto case took a little longer.

Darius was injured September 18, 2015 on his motorcycle when **a car from the left lane attempted turned right in front of him**. I try to get the word out to share the road and watch for [Motorcycles](#).

Darius had lacerations and bruising, and injuries to his legs, neck, teeth and head. Check out the photo below to see how the accident happened.



Darius's leg injury would not resolve on its own. His swelling continued and eventually, doctors relieved the swelling by performing calf incision, irrigation and debridement.

Darius also had wage loss claims. Darius had multiple employers he missed work for from the accident. Due to the case taking a while to settle, we had to send multiple demands for his injuries and updates to his wage loss claim throughout the process.

After no offer for a long time the defendant's insurance company offered \$45,000, barely enough to cover his medical and work comp lien. So we filed suit and litigated the case and was able to double the first offer, **settling for \$90,000**. Here's the letter with the low offer:

This confirms our offer of \$45,106.00 in settlement of the following claim:

Your client:	George Lee
Your policyholder:	John J. Smith
Claim #: _____	000000000000
Date of loss:	November 18, 2015
Loss location:	St Louis, Missouri

We believe this offer represents the fair value of the claims.

We negotiated the Workers' Comp lien asserted in the case. [Here's my book on Workers Compensation - Chapter 10 deals with liens.](#)

Even after settling the case it has taken almost 2 months to get the check from the other side. But finally, we are happy our client will ring in the new year with this behind him.

## 25 Puppies in 2017

My wife fostered 25 puppies through various organizations in 2017. I helped, too :-). This is up from 16 in 2016. Kristen is amazing at caring for them and finding them homes. We adopted one out at our Christmas party a couple weeks ago and thought we would take a break.

But Kristen got a call that Gateway Pet Guardians found **5 week old puppies out in the cold**. So we took three in to ring in the New Year. With this weather they would not have made it.



The three in the back we picked up December 28th. The one in the front is older - 3 months - and decided she would play mom by carrying them around by the scruff of their neck. #supercute.

Thanks to my staff for this awesome Christmas gift -  
Here's me as a bobblehead.

Gary Burger

MLK Day

January 15, 2018

Hi there, Allen, and Happy MLK Day!

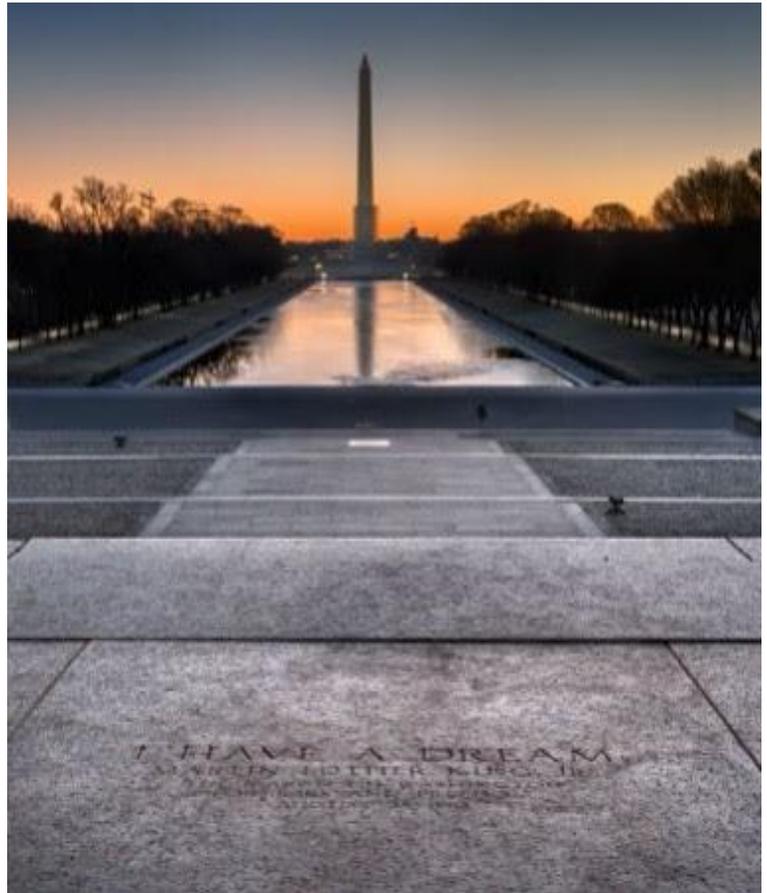
Martin Luther King's "[I Have a Dream](#)" speech was given almost 55 years ago.

We have progressed in King's dream that his children, "**live in a nation where they will not be judged by the color of their skin, but by the content of their character.**"

But our president picked this week to question admitting darker skinned immigrants from Haiti and Africa and instead white people from Norway. Racial ranking in immigration challenges our progress.

Did you know choosing immigrants from countries as a race litmus test was raised by conservatives in the 1920s? This led to race superiority theories in Germany and Italy before and during WWII.

This 1924 immigration reform was discussed and promoted by Trump campaign spokesmen Jeff Sessions and Steve Bannon.



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**I try not to be controversial in these emails, but as Dr. King said in his Dream speech:**

"Our lives begin to end the day we become silent about the things that matter."

Below I will talk about some good news about race relations, a funny video fail of mine with my son Jordan, influenza, and a court victory last week by Nicole Grovosky.

First, here's some wisdom by the [Rev. Dr. Martin Luther King Jr.](#):

"Injustice anywhere is a threat to justice everywhere. We are in an inescapable network of mutuality, ties in a single garment of destiny. Whatever affects one directly, affects all indirectly." [Letter from Birmingham Jail](#)

"So I have tried to make it clear that it is wrong to use immoral means to attain moral ends. But now I must affirm that it is just as wrong, or even more so, to use moral means to preserve immoral ends."

The arc of the moral universe is long, but it bends toward justice.

Words that are still relevant today as our president is making [comments](#) about people from other countries.

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## A Bit of Good in all the Bad

While disheartening, recent stories about those working to help others and denouncing Trump's comments are welcomed.

Senator Dick Durbin confirmed Trump made those "vile" comments repeatedly during an immigration meeting in which the Senator was present. Senator Durbin describes Trump's words as "sickening and heartbreaking words." The full story is [here](#).

Senator Durbin wasn't the only one to rebuke Trump's words - many reacted to the news. Another great story about an area Judge is truly inspiring.

A story was recently published on Federal District Judge Richard E. Webber. Judge Webber's story is astounding, you can check out the full article [here](#). Understanding he can make a difference, Judge Webber makes it a purpose to **meet with all of the people he sends to prison, to let them know in his words, he cares about them**. Here's an excerpt:

*At one point, the judge, who is white, knelt before one of the men in the all-black audience to say how sorry he was for sending so many young black men to prison — and to drive home his main point. "I'm here to tell you that I care about you,"*

Judge Webber says for many, they tell him he is the first person to ever tell them that. Judge Webber encourages them to take classes and graduate high school or get their GED, and when they do, **they often send their certificate to him**.

Judge Webber says the only way change is ever going to happen is if "everybody rolls up their sleeves and puts aside a lot of their preconceived ideas and looks for new ways to really solve some of these problems that aren't being solved"

## Justice for our Clients

This week, one of our attorneys, [Nicole Gorovsky](#), had a great victory for a young woman who was [sexually assaulted](#) on a college campus. As happens too often, the University did not accommodate the young rape survivor, and refused to remove the perpetrator from campus.

He attended class with her and there was no school recourse, contrary to [Title IX](#). The woman was forced to see her attacker on campus daily as she attended class despite the fact that her perpetrator continued to harass her.

Thanks to the work of Burger Law, the woman was able to get a hard-fought full order of protection barring the rapist from campus until well after she graduates. He can't be within 500 feet of her, go near her home, or go anywhere near where she works. Justice prevails and [clients are safer](#) due to the work of our [attorneys!](#)

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## Funny Client Testimonial

In a recent newsletter, I spoke about a client we had gotten a great settlement for who was injured when a U.S. Postal Service semi rear-ended her. You can check out the full story we did previously [here](#).

I Facebook live videoed her about her case after it was done. But before we could get started, my son hilariously let me know how unpopular I was:

But after a good laugh, Sabrina and I got back to her case, and she was a great sport about the videographer offering commentary.

Representing clients like Sabrina and getting them justice is why we do this.

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## Get a Flu Shot

Many people think the flu is no big deal and don't take symptoms seriously. We had a client a few years ago whose husband exhibited flu like symptoms. In her claim, we sued two emergency room physicians who failed to timely diagnose and treat sepsis in Lisa's husband.

There are many signs of sepsis infection and it can originate from anything. Sepsis is a general term referring to infections. However, when a bacterium becomes a sepsis infection, it can lead to cascading events that can bring on death quickly.

The flu can be fatal. As a part of her mission, Lisa helps raise sepsis awareness after her husband died.

She has truly taken his memory and her love of him and made lemonade out of lemons by trying to save the lives of other people who get sepsis infections. Below is a billboard she has put up. Please go [here](#) for sepsis awareness information.

To donate to help sepsis awareness and the Jeffrey Ray Davis fundraiser, [click this link](#).



There are other stories about the potential dangers of the flu and other infections that arise in the winter that many people shrug off. A [San Diego Navy veteran](#) was hospitalized in the Intensive Care Unit after his flu like symptoms (headache, chills, body aches) turned into difficulties breathing and renal failure.

After a healthy 21-year-old man died this year from complications of the influenza virus, Time Magazine did an [article](#) outlining specifically what the flu does and how it can turn fatal.

# Compel, Liens and CLEs

January 29, 2018

Can you believe how nice it has been this week? Check out the photo I took a year ago today ---->

Hard to believe it's January in the Midwest when it's 60 degrees outside. Hope you enjoyed it.

Below I give my top 10 tips on addressing liens in cases and have an Illinois CLE coming up on 2/23. But first:



## Compel

I argued a motion to compel last week against the Missouri Department of Corrections in Cole County and won each of the 9 points raised. The challenge is that I am about 6 weeks away from trial and the documents were previously ordered to be produced.

Apparently, I'm not the only one. As illustrated by a recent Post Dispatch article, the Missouri Attorney General has been sanctioned in different courts for not complying with orders to produce documents and information. For that article click [here](#).

In my case we are helping a class of corrections officers because Missouri will not pay them for the time it takes them to get through metal detectors and airlocks, get keys and radios and walk back into the bowels of the prison to relieve the prior shift. It's called pre and post shift activity, or donning and doffing.

It's part of their job, they're required to do it and their bosses admit it's really important. Officers work about a half hour a day without being paid. For my webpage regarding this case click [here](#).

We try this case in March and hope to be successful. I'll let you know.

Ours is only the most recent employment case with the Department of Corrections. They have had numerous verdicts against them for other bad employment practices

## Upcoming CLE on Feb 23

USA&M is putting on a Best Practices Seminar that I am excited to be a part of. I am speaking on on the Reptilian Theory: The New Frontier of Trial and Negotiation Practice. Register for the CLA by [clicking here](#).

The “reptile approach” was created by Don Kennan and David Ball. In their book, Reptile: The 2009 Manual of the Plaintiff’s Revolution, the authors teach about the psychology of persuasion and the base or “reptile” brains in all of us.

But to get the book or learn the system you have to be a verified Plaintiff’s lawyer or member of a Plaintiff’s legal firm. A law firm that does any insurance or self-insurance defense work on behalf of defendants cannot buy the material or participate.

I’ve done CLEs and blogs on persuasion and jury selection before. [Here’s a blog I did a couple years ago after picking some juries and trying some cases](#). The CLE will not teach the Reptile practice but discuss its roots in well established Illinois law.

Check out Keenan and Ball’s website where they discuss the theory [here](#).

And if interested, check out the CLE on February 23rd. Again, you can register for it [here](#).



## Liens

I get lots of questions about liens from lawyers and clients. We handle them in almost every case. I delivered a detailed presentation on it last year: click [here](#) for my written material on liens at the CLE and [here](#) for a video of my lecture on liens and teaching other attorneys about handling and resolving them

### Here are my top ten tips on addressing liens.

1. Is it properly asserted? Certified mail? No lien for in state, non-ERISA health insurance benefits.
2. Amount accurate? Many times medical providers and Medicaid have the bills wrong. Sometimes, medical in the lien is not related to the incident. You wouldn't just pay a personal bill without checking the accuracy.
3. Start working on liens early - don't wait until the case is settled. Start contacting lien providers to see whether they will reduce. Send them the first low offer so they know how hard you are working for a recovery.
4. Always reduce the lien. Most lien providers will reduce them. I typically try to reduce a lien by 1/3. Some are tough so you may not get this every time. Know your arguments why they should reduce - bills too high, take less with insurance, had a lawyer to collect, etc.
5. But do not be too unfair in reducing - that doctor/nurse/PT/chiro helped your client and you want them advocating in your cases.
6. If you can't reduce a lien that should be reduced, file a Motion to Adjudicate Lien in court. The court has inherent authority to establish a fair value of the lien. If a medical provider saw someone once and billed \$10,000.00, that's not fair. You would be amazed how the other side caves or doesn't show up at the hearing. E-mail me if you want a form motion.
7. Use the Missouri or Illinois lien reduction statutes, these are powerful tools to ensure that a claimant gets half the net recovery after attorneys fees and expenses and ensures that the lien holder cannot sue your client later. Email me for the statutes and my Excel spreadsheets that calculate the pro rata lien reductions.
8. Always talk with your client and explain liens and how they relate to the case. By the time the case is settled, the client should understand liens, their importance and how they are involved in the settlement. Remember that the client got a good benefit from the lien and medical care which contributed to the recovery, so liens are a necessary part of the case.
9. Liens are good. Having all the creditors assert liens means that when a case is over your client doesn't have anyone chasing them to get paid. We often encourage lien holders to place liens so that we can make sure that if they are reduced and that the client gets a good

deal on those bills and they are free and clear of any charges related to the claim.

10. Don't be afraid of ERISA liens. Just because an ERISA lien holder can assert Federal Court jurisdiction and won't reduce does not mean that they will stick to their position. Are they gonna really pay a lawyer to file suit? I leave the ERISA lien in my trust account and call them in 6 months.

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## Cute Photos of Puppies

Whenever folks say they like these emails they often ask about our foster puppies. Here's our current batch - rescued from outside in subzero temperatures at 5 weeks old. They are doing great and are ready for their forever homes.

Meet David Chang. He can be adopted [here](#).

His sister, Nancy Silverton, can be adopted [here](#).

Their sister Alice Waters, can be adopted [here](#).



Are these the greatest shirts ever?

# Depositions and Karen Russo

February 12, 2018

Good Morning, Richard,

I've just spent about three weeks being in depositions every day. I am going to discuss a couple settlements obtained right after depositions below and a zero offer to \$100,000 full policy settlement. But first I wanted to thank my friend and **court reporter, Karen Russo**.

I am blessed to have used the **same court reporter in my litigation work for 20 years**. Karen Russo is simply an amazing court reporter and person.

Karen and I have done hundreds, likely over a **thousand, depositions together**. I spend my time in depositions concentrating on winning my case and doing all of the litigation tactics I use. I never have to worry about whether she is keeping up or has got my back.

She gets every word said, which is important because that's how we win cases.

She is such a stable, amazing professional that, frankly, I take it for granted. Sometimes we are around people in our life that we just count on to be steadfast, rock solid, and always there. I often thank her, but have not in an email like this.

Thanks, Karen. You're a fantastic court reporter and consummate professional.

She is an independent court reporter with her own business. [Click here](#) to hire her.

Karen has been in the trenches with me in some amazing cases and amazing depositions. We couldn't even begin to relate the amazing stories and crazy testimony we have gotten together.

Last Thursday at the end of 10 hours of depositions of some California PhD experts against my case (and with only a couple 5 minutes breaks), I turned to Karen:

Me: "It has been a while since we've done a 10 hour deposition, hasn't it."

Karen: "Yeah, you're slowing down as you get older."

Me: "I guess I am. I am not giving you carpal tunnel today am I."

Karen: "You already did long ago."



The other thing I sometimes do is brag to the witnesses in depositions that Karen and I have been doing this for a long time together - usually when she reads back a question they haven't answered.

Typically, I tell them that Karen has been doing this for 40 or 50 years (as an age joke). She can't really respond -- we are on the record and she has to report everything I am saying. I have made this joke at least 50 times - it is only funny to me.

Karen also has an amazing life and is a devoted mother, community volunteer and supportive partner to her husband - an amazing cook. He has a fantastic St. Louis based restaurant and catering company called [Russo's Catering](#).

I can't say enough about Karen. She is the type of person who just quietly goes about her life and her business - winning daily. I have not heard her brag or a cross word in 20 years.

She brightens everyone's day, supports her family friends and community and is an absolute joy to be around. If you need one of the best court reporters in St. Louis, [click here for her website](#).

## Three Settlements after Deposition

Depositions are an important step in resolving cases that are being litigated and well worth the energy and time that goes into them.

At Burger Law, We take depositions very seriously, and prepare our clients with videos, over the phone, and in person interviews for their depositions. We also have our team researching details of the defendants for their depositions, with no stone unturned.

People talk about how we push forward in cases and take a lot of depositions. They are extremely valuable. Below I give a few examples of cases we have recently settled due to depositions and the testimony given by either my client, or the defendant, that sways them into either accepting liability, or understanding the gravity of the injury and their role in it.

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## Hit and Run

I recently wrote about my client Joe and promised I would give an update. I ended the last update saying we had asked for the depositions of the defendants. They settled the day before the defendants depo and after Joe did a great job at his.

Joe testified the other driver hit his car then sped off, went the wrong way on a street downtown and even opened their trunk to prevent their license plate being read.

They followed the car and were able to get the license plate. We found the owner of the car and sued them. They said they did not know who was driving - but it was their daughter's car. So we sued the daughter - then she said she did not know who was driving. I guess it runs in the family.

But we knew we would get to the bottom of it, and depositions were how we did it. We settled his case for more than four times his medical bills.

Check out the police report below for the entire story of what happened with this hit and run.

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**9. NARRATIVE / STATEMENTS (If additional room is necessary, use Section 11 - Narrative / Statements Continuation)**

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Driver 2 stated she was traveling northbound on Interstate 55 in vehicle 2. Driver 2 stated while traveling in the far right lane, the front right side of vehicle 1 collided with the left side of vehicle 2. Driver 2 stated vehicle 1 continued traveling northbound on Interstate 55 until exiting at Broadway.

Driver 2 stated she followed vehicle 1 believing the driver wanted to get off of the interstate; however, after exiting Interstate 55 vehicle 1 drove northbound on S. Broadway at a high rate of speed. Driver 2 stated she last observed the vehicle turning left on Osceola and then turned right onto California. Vehicle 2 drove northbound on California until she could no longer see the vehicle. Driver 2 stated she responded to the intersection of S. Broadway and Meramec and contacted this Department in order to report the incident.

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## Next Day Settlement

Chris was sitting on a retaining wall when it collapsed. He was injured but the defendant would offer almost nothing. We fought with the defendants for months. They wouldn't budge.

In deposition, the corporate designee stated they had no system for checking the safety of the retaining walls on their complex, have no way of ensuring their safety, and said they had a database where they kept records of any incidents, but not wall failure.

The day after the deposition, the defendants nearly doubled their offer, and we were able to settle the case. Check out the video below to hear more on why depositions can be so useful in cases like this.

## From \$0 to \$100,000 Full Policy Settlement

Our client, Rick Dunlap, stopped at Eovaldi's Deli on the Hill for lunch, while hauling materials on the job. After Rick had parked and gotten out of the truck, he realized he left the keys in it. Rick reached back in and his open door was **smashed by another car**.

The streets are narrow in that neighborhood - especially at lunch time with cars parked on both sides of the street. The Defendant had all kind of stories - Rick opened his door into her and it was his fault. The police talked to her and she cried and apologized.

The Police Report noted that the Defendant was at fault. But she called them later and added an addendum to the report that Rick suddenly opened his door, hitting her car. The Insurance company **originally denied liability completely and found Rick to be 100% at fault. Here's the letter:**

Our investigation has determined that your client, Richard Dunlap, is at fault as he opened the vehicle door into our insured vehicle..

We have found your client 100 percent responsible and respectfully decline payment for your damages.

The Defendant bent Rick's door while he was holding on to it - pulling his shoulder. She was speeding. Rick tore his rotator cuff in the accident and needed surgery. After getting his surgery, and some physical therapy we made a policy limit demand. **The insurance company refused to make an offer on the case until after Rick's deposition.**

Rick did an amazing job at his deposition and was well prepared. We work really hard to have our clients advocate for their case well in their depos.

Three days later they offered the full policy limits of \$100,000. Rick is a great and honest guy and I was honored to represent him. He also went back to work just two days after his shoulder surgery, with his arm in a sling, because he is such a hard worker.

Below are pictures from the case. See how narrow the street is the Defendant was speeding through. She had stopped at the stop sign in the photo, hundreds of feet away, when Rick first exited the truck. Yet she claimed he suddenly opened the door and hit her.



We are happy to have gotten Rick such a great result but **the battle continues. Rick's health insurance was provided through his work and they were self-insured. They denied health insurance coverage claiming that they didn't have to pay if a third party was at fault.**

Also, Rick did not file a worker's compensation claim because he was such a loyal employee and wanted to solely pursue his civil claims.

Rick is no longer with the company and has started a new job. We will not stop fighting until Rick's medical bills are paid for by his health insurance or by the company's worker's compensation insurance. We are happy to continue to fight for clients like Rick to get them full compensation.



Depo King.

Gary Burger

*Board Certified/AV Rated/Superlawyer*

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**I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution. - Thomas Jefferson**

## Responses:

“Thanks for all the newsletters. I appreciate the stories and the law. Keep up the fight!”

- Mary